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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
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NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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List of Public Laws

NOTE: A complete listing of all public laws from the second session of the 95th Congress was published as Part II of the issue of December 4, 1978. (Price: 75 cents. Order by stock number 022-003-00960-4 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone 202-275-3030.)

The continuing listing will be resumed upon enactment of the first public law for the first session of the 96th Congress, which will convene on Monday, January 15, 1979.

rules and regulations

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

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

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

Revocation of Members-of-Family Restriction

AGENCY: Civil Service Commission.

ACTION: Final regulations.

SUMMARY: The Civil Service Commission's regulations are amended to revoke members-of-family restriction repealed by Public Law 95-454.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary Zankowski, 202-632-6817.

Accordingly, 5 CFR 338.201 is revoked.

(Pub. L. 95-454, Section 307(h))

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

[FR Doc. 78-36351 Filed 12-28-78; 8:45 am]

[6325-01-M]

PART 550—PAY ADMINISTRATION (GENERAL)

Income Tax Withholding

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Public Law 95-365, approved September 15, 1978, provided for the mandatory withholding of city income or employment taxes from the pay of Federal employees who are residents of certain cities that levy such taxes, but who are employed at Federal activities located outside the city, provided that the city of residence and the employing Federal activity are located in the same State. Previously, such withholding had been voluntary under § 550.361 of this part.

In order to reflect this change in law, the Commission has revised § 550.361 to delete the obsolete authorization for voluntary withholding in this situation. As revised, the regulation will authorize agencies to permit employees to make payroll allotments for the payment of (1) State or District of Columbia income taxes when the employee is a resident of the State or District of Columbia, but is employed at a Federal activity outside the State or District of Columbia; and (2) city or county income or employment taxes when the employee is either employed at a Federal activity outside of, or is a resident of, a State other than the State in which the taxing city or county is located.

EFFECTIVE DATE: December 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Betty J. Roth, Bureau of Policies and Standards, Technical Services Staff, Room 3353, Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415, 202-632-6553.

Accordingly, 5 CFR 550 is amended by revising § 550.361 to read as follows:

INCOME TAX WITHHOLDING

§ 550.361 Scope.

When the Secretary of the Treasury has entered into an agreement to withhold income or employment taxes from the pay of employees under sections 5516, 5517, or 5520 of title 5, United States Code, an agency may permit an employee, regardless of his or her tenure, to make an allotment for:

(a) The payment of State or District of Columbia income taxes when the employee is employed outside of, but is a resident in, the State or the District of Columbia;

The payment of city or county income or employment taxes when the employee is employed outside of, or is not a resident in, the State in which the city or county is located.

(5 U.S.C. 5527; EO 10982, 3 CFR 1959-1963 Comp., p. 502, Pub. L. 95-365, Sept. 25, 1978.)

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

[FR Doc. 78-36353 Filed 12-28-78; 8:45 am]

[6325-01-M]

PART 772—APPEALS TO THE COMMISSION

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This document amends the regulations to provide for the continuation of action on and acceptance and processing of appeals by the Merit Systems Protection Board in lieu of the Federal Employee Appeals Authority, the Appeals Review Board, and the Civil Service Commission pursuant to Sections 202 and 203 of Reorganization Plan No. 2 of 1978 (43 FR 36067).

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

James C. Spry, Executive Assistant to the Commissioners, U.S. Civil Service Commission, (202) 632-5556.

SUPPLEMENTARY INFORMATION: The U.S. Civil Service Commission will be redesignated the Merit Systems Protection Board (the "Board") effective January 1, 1979 pursuant to Section 201 of Reorganization Plan No. 2 of 1978 (43 FR 36037). The hearing, adjudication, and appeals functions of the Commission remain with the Board pursuant to Section 202(a) of the plan. The plan provides further, in Section 203, that the Board shall accept appeals from agency actions affected prior to the effective date of the plan and that proceedings then before the Federal Employee Appeals Authority, the Appeals Review Board, and the Commission shall continue before the Board.

Accordingly, 5 CFR Part 772 is amended as follows and shall remain in effect as amended from January 1, 1979 until the regulations of the Board are issued pursuant to the Civil Service Reform Act of 1978 (P.L. 95-454).

a. Subpart A is revised to read as follows:

Subpart A—Authority to Issue Final Decisions on Matters Before the Merit Systems Protection Board

Sec.
772.101 Appeals Officers.
772.102 Review Officers.

Subpart A—Authority To Issue Final Decisions on Matters Before the Merit Systems Protection Board

§ 772.101 Appeals Officers.

Appeals Officers of the Merit Systems Protection Board (the "Board") are authorized to make and issue final decisions and orders on all matters appealable to the Board except as otherwise provided by law or Board policy.

§ 772.102 Review Officers.

Review Officers designated by the Board shall, subject to review by any member of the Board on his/her own motion, deny requests to reopen and reconsider decisions of appeals officers of the Board when the moving party fails to establish, pursuant to section 772.310 of this part, a valid basis for reopening the previous decision. The review officer shall, when recommending granting a request for reopening and reconsideration, report to the Board—

(a) The basis for reopening the previous decision;

(b) The issues of fact, law, or both which need to be reconsidered and resolved; and

(c) A recommended final determination of the matters at issue, or the action recommended to resolve the outstanding issues.

Subpart C—[Amended]

b. Subpart C is amended by:

(1) Revising the title of subpart C to read "The Board's Appellate Review of Actions Against Employees";

(2) Revising § 772.301 to read:

§ 772.301 Coverage.

Except as otherwise provided, this Subpart applies to appeals to the Merit Systems Protection Board (hereinafter referred to as the Board) under Subpart A of Part 300 of this chapter, Subpart E of Part 302 of this chapter, Subpart H of Part 315 of this chapter, Subpart B of Part 330 of this chapter, Subpart I of Part 351 of this chapter, Subparts B, C, E, F, and G of Part 352 of this chapter, Subpart D of Part 353 of this chapter, Subparts D and E of Part 531 of this chapter, Subparts B and C of Part 752 of this chapter, and to appeals from adverse suitability determinations under Part 731 of this chapter, from adverse actions effected under Part 754 of this chapter, from decisions of the Bureau of Retirement, Insurance, and Occupational Health on application for disability retirement effected under Part 831 of this chapter, and from decisions of the Bureau of Retirement, Insurance, and Occupational Health on issues of entitlement to rights or benefits by claimants under Parts 831, 870, 871, 890 and 891 of this chapter.

§§ 772.302–772.308 [Amended]

(3) Substituting "the Board" for the terms "the Commission", "Federal Employee Appeals Authority", "office of the Appeals Authority", and "Appeals Authority", wherever such terms appear in §§ 772.302 through 772.308;

§ 772.309 [Amended]

(4) Substituting "appeals officer" for "office of the Appeals Authority" and "Board" for "Appeals Review Board" in § 772.309;

§ 772.310 [Amended]

(5) Substituting "Merit Systems Protection Board" for "Appeals Review Board" in § 772.310(a);

(6) Substituting "Office of Appeals Review, Merit Systems Protection Board, Washington, D.C. 20419" for "Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415" in § 772.310(c);

(7) Substituting "Board" for "Appeals Review Board" in § 772.310(g); and

§§ 772.311 and 772.312 [Revoked]

(8) Striking §§ 772.311 and 772.312.

Subpart D—[Amended]

c. Subpart D is amended by substituting "Board" for "Appeals Review Board", "Appeals Authority", "Commission" or "Commissioners" wherever such terms appear.

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

[FR Doc. 78-36352 Filed 12-28-78; 8:45 am]

[3410-21-M]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 11—SALES OF AGRICULTURAL COMMODITIES FOR FOREIGN CURRENCIES

Subpart A—Regulations Governing the Financing of Commercial Sales of Surplus Agricultural Commodities for Foreign Currencies

DELETION OF REGULATIONS

AGENCY: Office of the General Sales Manager, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes regulations applicable to the financing of the sale of surplus agricultural commodities for foreign currencies pursuant to Agricultural Commodities Agreements entered into under Pub. L. 480, 83d Congress, prior to January 1, 1967. Since these regulations are not applicable to the financing of sales made pursuant to such agreements entered into on or after such date, it has been determined that these regulations no longer need to be set forth in the Code of Federal Regulations. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to such Pub. L. 480 agreements entered into prior to January 1, 1967.

EFFECTIVE DATE: December 29, 1978. See "Supplementary Information."

FOR FURTHER INFORMATION CONTACT:

George J. Pope, Office of the General Sales Manager, U.S. Department of Agriculture, 14th and Independence Avenue SW., Room 4085 South Building, Washington, D.C. 20250, Telephone (202) 447-5637.

SUPPLEMENTARY INFORMATION: Since this regulation merely deletes provisions which are not applicable to the current Pub. L. 480 program, I hereby find that compliance with the notice and public participation requirements of E.O. 12044 and 5 U.S.C. 553(b) and the delayed effective date provision of 5 U.S.C. 553(d) is unnecessary.

FINAL RULE

Subpart A—[Reserved]

Accordingly 7 CFR Part 11, Subpart A, including Appendix A and B, is deleted and reserved. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to Agricultural Commodities Agreements entered into under Pub. L. 480, 83d Congress, prior to January 1, 1967.

(Sec. 101-115, Pub. L. 480, 83d Cong., as amended (7 U.S.C. 1701 et. seq.); E.O. 10900, 26 FR 143, as amended.)

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

KELLY HARRISON,
General Sales Manager, Office of the General Sales Manager, U.S. Department of Agriculture.

[FR Doc. 78-36335 Filed 12-28-78; 8:45 am]

[3410-21-M]

PART 14—SALES OF AGRICULTURAL COMMODITIES ON CREDIT UNDER LONG-TERM SUPPLY CONTRACTS

Deletion of Regulations

AGENCY: Office of the General Sales Manager, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes regulations applicable to the financing of surplus agricultural commodities purchased by importing countries and private trade entities pursuant to Agricultural Commodities Agreements entered into under Public Law 480, 83d Congress, prior to January 1, 1967. Since these regulations are not applicable to the financing of sales made pursuant to such agreements entered into on or after such date, it has been determined that these regulations no longer need to be set forth in the Code of Federal Regulations. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to such Pub. L. 480 agreements entered into prior to January 1, 1967.

EFFECTIVE DATE: December 29, 1978. See "Supplementary Information."

FOR FURTHER INFORMATION CONTACT:

George J. Pope, Office of the General Sales Manager, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Room 4085 South Building, Washington, D.C. 20250, Telephone: (202) 447-5637.

SUPPLEMENTARY INFORMATION: Since this regulation merely deletes provisions which are not applicable to the current Public Law 480 program, I hereby find that compliance with the notice and public participation requirements of E.O. 12044 and 5 U.S.C. 553(b) and the delayed effective date provision of 5 U.S.C. 553(d) is unnecessary.

FINAL RULE

PART 14—[RESERVED]

Accordingly 7 CFR Part 14 is deleted and reserved. However, the provisions of these regulations shall continue to apply to any obligations or liability incurred or any rights received or accrued in connection with the financing of the sale of agricultural commodities pursuant to Agricultural Commodities Agreements entered into under Public Law 480, 83d Congress, prior to January 1, 1967.

(Sec. 101-115, Pub. L. 480, 83d Cong., as amended (7 U.S.C. 1701 et seq.); E.O. 10900, 26 FR 143, as amended.)

Signed at Washington, D.C., on: December 26, 1978.

KELLY HARRISON,
General Sales Manager, Office of the General Sales Manager, U.S. Department of Agriculture.

[FR Doc. 78-36336 Filed 12-28-78; 8:45 am]

[3410-30-M]

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Program Management

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the National School Lunch Program regulations to accomplish the following: (1) Places additional regulatory controls on the involvement of food service management companies in the National School Lunch Program. (2) Makes applicable to School Food Authorities the procurement standards which currently apply only to State agencies. This action is being taken to effect better program management and to implement the intent of OMB Circular No. A-102.

EFFECTIVE DATE: This rule shall be effective for contracting and procurement of supplies and services for school year 1979-1980 and thereafter. Existing contracts which extend into school year 1979-1980 may remain in effect for the 1979-1980 school year with notification to the State agency.

FOR FURTHER INFORMATION, CONTACT:

Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250 202-447-8130.

SUPPLEMENTARY INFORMATION:

FOOD SERVICE MANAGEMENT COMPANIES

On January 13, 1978 there was published in the FEDERAL REGISTER (43 FR 1955) a proposed amendment to the regulations to impose requirements upon School Food Authorities entering into contractual agreements with commercial enterprises for the preparation and service of program meals.

Interested persons and groups were given 45 days in which to submit comments, suggestions or objections regarding the proposed amendment. A total of 193 comments were received by the close of the official comment period, February 25. Forty-two of these comments fully supported the proposed regulations, stating that more controls on food service management companies involved in the program were necessary.

One hundred fifty-one comments were in objection to one or more of the requirments in the proposed regulations. The respondents' major area of concern regarded the one-year duration for all food service management contracts, prohibition of per-meal management fees, the use of a standard contract, reduction of authority at the local level, and the required use of a cycle menu. In addition, there were several objections to applying the same requirements to food service management companies and vendors. In drafting final regulations all of these sensitive issues have received full consideration, and the final regulations have been modified as follows.

Included in the proposal was a requirement to have State agencies develop a standard form contract for use by School Food Authorities contracting with food service management companies. The standard form contract was to be based upon a model drafted by the Department. Nine objections were received addressing this issue directly, and seven comments were received in objection to contracting regulations in general. School Food Authorities felt that their authority was being reduced because they would not be allowed to write their own contracts.

The respondents contended that food service management companies must provide both a service and a product. They believe the service portion of the food service management contract could not be properly addressed in a standard contract, but it is more suited for a request-for-proposal type of procurement.

The standard contract provision was not included in the regulations to reduce authority at the local level or to impede effective bidding procedures. There are certain basic requirements that need to be included in each contract, and it was determined that the use of a standard contract would be an effective way of implementing these controls. However, in final form these requirements will be included in food service management company contracts through the listing of minimum requirements in the final regulations. The minimum requirements include most of the requirements which were to be contained in the standard contract. This procedure will permit the School Food Authority to write its own contract, providing all of the provisions of the regulations, including

the minimum standards, are contained in the contract. Twenty-seven respondents objected to the mandatory competitive bid procedure, stating that the request-for-proposal type of procurement was preferable. The minimum standards approach will allow the request-for-proposal type of procurement to be utilized at the discretion of the School Food Authority.

The greatest number of comments in objection to a single issue concerned the limitation of contract duration to one year. Ninety-seven comments were in objection to this requirement. As proposed, a School Food Authority would initiate the procurement process each and every year it wished to contract with private enterprises. Respondents objected, stating this provision was considered to be a limitation of local authority; a burden on the School Food Authority since it would increase paper work; and a detriment to food service management company employees' morale because length of employment would be uncertain.

This provision has been modified in final form to be responsive to the comments in objection, but still to allow for open and free competition. The provision for one-year contract duration shall remain; however, options for two yearly renewals will be allowable, and a provision for 60-day termination by either party is mandatory. This would permit the School Food Authority to extend the contract on a yearly basis if the performance and costs were satisfactory. It would also allow the School Food Authority to terminate the contract, should the contractor's performance be unsatisfactory.

Thirty-three of the respondents objected to the requirement that a School Food Authority develop a cycle menu for the entire school year. They stated that strict adherence to a cycle menu would be counterproductive as it would prohibit a contractor from adjusting menus to satisfy the likes and dislikes of children. In addition, it could possibly limit the use of USDA-donated foods since the cycle menu would be prepared well before they knew which foods would be donated by the Department.

To have the School Food Authority prepare menus for the year was not the intent of the proposed regulations. Rather, the intent was to require the School Food Authority to include a cycle menu with the invitation to bid or request for proposal, upon which cost to a School Food Authority could be based. This would permit all interested food service management companies to compete in a fair and equitable manner.

The cycle menu requirement will be retained with clarification because of its value in standardizing procurement and as a management tool. Variations from the menu will be allowable after the first 21 days of food service with approval of the School Food Authority.

To assist in the development of acceptable menus regulations also require a School Food Authority contracting with a food service management company to establish an advisory board to assist in menu planning.

Objections to the proposed prohibition of management fees on a per meal basis numbered 81. Respondents indicated that per-meal management fees provide an incentive to the contractor to more fully meet the National School Lunch Program goal of increasing participation in the "Type A" lunch, and that if, through good management, the company can encourage increased participation it is appropriate that it be paid for its efforts. This part of the proposal has been changed to allow contracts with the management fee on a per-meal basis. However, cost-plus-a-percentage-of-cost contracts have been prohibited.

Twenty-seven comments were received objecting to the State agency approval of contracts over $100,000 and the requirement mandating justification to the State agency should the School Food Authority contemplate accepting other than the low bid. The respondents interpreted these requirements as an erosion of authority at the local level. They contend that the local school boards should have the right to write and approve contracts as long as program objectives are being achieved. These requirements have been excluded from the regulations. As stated by nine of the respondents, the $100,000 figure is very arbitrary, and many schools with large contracts have more experience and expertise in food service management contracts than schools with small contracts. In addition, very few of the State agencies have employees with sufficient experience in the field of food service management contracting to approve contracts.

In lieu of these requirements, the regulations have been changed to require State agencies to provide assistance to any School Food Authority requesting such aid. A copy of all food service management contracts must be forwarded to the State agency for review, and it will be the responsibility of the State agency to review each contract to ensure that all provisions required by these regulations have been included and to conduct on-site reviews of at least 20 percent of all food service management contracts within the State each school year.

The definitions of a "food service management company" and "vendor" were found to be objectionable to nine respondents. Objection was also made to the fact that vendors should be required to adhere to the same regulations as food service management companies.

In response to these objections the definition of a "food service management company" has been expanded and clarified and the definition of a "vendor" has been removed from the final regulations. The relationship between a School Food Authority and a vendor is product-oriented and as such is adequately addressed in the procurement section of the regulations. Therefore, the minimum standards section does not apply to vendors, and reference to them has been deleted.

PROCUREMENT STANDARDS

Currently, the procurement standards in the regulations pertain only to procurement of supplies, equipment, and other services by State agencies. In accord with the extension of Office of Management and Budget Circular A-102 to school districts, this regulation will require adherence at the School Food Authority level. All program School Food Authorities will be affected by this rule, not just those just commercially managed.

Accordingly, Part 210 of Chapter II, Title 7 CFR is amended as follows: 1. In § 210.2, paragraphs (h-1), h-2), (h-3), (h-4), (h-5), and (h-6) are redesignated as (h-2), (h-3), (h-4), (h-5), (h-6), and (h-7), respectively, and a new paragraph (h-1) is added to read as follows:

§ 210.2 Definitions.

* * * * *

(h-1) "Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the School Food Authority to manage any aspect of the school food service.

* * * * *

§ 210.8 [Amended]

2. In § 210.8, paragraph (d) is deleted and reserved.

3. A new § 210.8a is added to read as follows:

§ 210.8a Food service management companies.

(a) Any School Food Authority (including a State agency acting in the capacity of a School Food Authority) may contract with a food service management company to manage its feeding operation in one or more of its schools. Any School Food Authority contracting with a food service management company shall adhere to the procurement standards set forth in § 210.19a. A School Food Authority that employs a food service management company shall remain responsi-

ble for insuring that the food service operation is in conformance with its agreement under the Program and shall monitor the food service operation through periodic on-site visitations. The School Food Authority shall retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals. The School Food Authority shall maintain applicable health certification and be assured that all State and local regulations are being met by a food service management company preparing or serving meals at a School Food Authority facility. Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. However, contracts which provide for management fees established on a per-meal basis are allowed.

(b) The School Food Authority shall adhere to, and include in any contractural agreement with a food service management company for the management of the program, all the requirements set forth in this section. Such contractual agreements shall expressly provide as a minimum that:

(1) the food service management company shall maintain such records as the School Food Authority will need to support its claim under this part, and shall report thereon to the School Food Authority promptly at the end of each month, at a minimum. Such records shall be available, for a period of 3 years from the date of receipt of final payment under the contract, for inspection and audit by representatives of the State agency, the Department, and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit;

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract;

(3) No payment shall be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the School Food Authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, weight, ingredients, formulation, etc. The Department shall provide guidance to assist in the development of specifications.

(c) Any School Food Authority contracting with a food service management company shall establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(d) The contract between a School Food Authority and a food service management company shall be of a duration of no longer than one year; and options for the yearly renewal of a contract may not exceed two additional years. All contracts will include a termination clause whereby either party may cancel for cause with 60-day notification.

(e) School Food Authorities shall, in addition to the procurement requirements specified in § 210.19a, adhere to the following when contracting with food service management companies:

(1) The invitation to bid or request for proposal shall contain a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a School Food Authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the School Food Authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the School Food Authority;

(2) Any invitation to bid or request for proposal shall indicate that nonperformance shall subject the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The School Food Authority shall indicate these sanctions in accordance with the procurement provision stated in § 210.19(n)(1).

(f) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall accrue only to the benefit of the School Food Authority's feeding operation, and shall be utilized therein.

4. In § 210.14, new paragraphs (b) and (c) are added to read as follows:

§ 210.14 Special responsibilities of State agencies.

* * * * *

(b) Food service management companies. Each State agency, or FNSRO where applicable, shall review yearly each contract between any School Food Authority and a food service management company to ensure compliance with all the provisions and standards set forth in § 210.8a.

(c) Each State agency, or FNSRO where applicable, shall monitor on-site each year not less than 20 percent of all School Food Authorities who have contracted with a food service management company and may require that all food service management companies that wish to contract for food service with any School Food Authorities in the State must register with the State agency. State agencies, or FNSRO where applicable, shall provide assistance upon request of a School Food Authority to assure compliance with program requirements.

* * * * *

5. § 210.19a is revised to read as follows:

§ 210.19a Procurement standards.

(a) This section provides standards for use by State agencies and School Food Authorities in establishing procedures for the procurement of supplies including food, equipment, and other services with Program funds: These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with provisions of applicable Federal law and Executive Orders. State agencies or School Food Authorities may use their own procurement regulations which reflect applicable State and local law, rules, and regulations provided that procurements made with Program funds adhere to the standards set forth in this section.

(b) The standards contained in this section do not relieve a State agency or School Food Authority of the responsibilities arising under its contracts. The State agency or School Food Authority is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the Program. This includes, but is not limited to: disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) Each State agency or School Food Authority shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting for payment and expending Program funds. The State agency's or School Food Authority's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything or monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall pro-

vide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's or School Food Authority's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of a State agency or School Food Authority, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency or School Food Authority should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) Each State agency or School Food Authority shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency or School Food Authority to avoid purchasing unnecessary or duplicate items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by each State agency or School Food Authority to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for procurements to be performed with Program funds.

(i) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Program. The "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" method of contracting shall not be used.

(j) Formal advertising, with adequate purchasing descriptions, sealed bids, negotiations and public openings shall be the required method of procurement unless negotiation pursuant to subparagraph 4 of this paragraph is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency or School Food Authority, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid;

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency or School Food Authority;

(3) Any or all bids may be rejected when it is in the State agency's or School Food Authority's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations;

(4) Procurements may be negotiated by the State agency or School Food Authority if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the State agency, or FNSRO where applicable, for prior approval);

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for highly perishable materials or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by applicable law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(k) Contracts shall be made by State agencies or School Food Authorities only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies or School Food Authorities for negotiated purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: (1) justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency or School Food Authority to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(n) The State agency or School Food Authority shall include, in addition to provisions to define a sound and complete agreement, the following requirements in all contracts which it awards when the contract costs are to be borne by Program funds:

(1) All contracts in excess of $10,000 shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts awarded by State agencies or School Food Authorities in excess of $10,000 shall contain suitable provisions for termination by the State agency or School Food Authority, including the manner in which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded by a State agency or School Food Authority and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

(4) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as implemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or School Food Authority shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to the Department;

(5) When required by the Federal grant program legislation, all construction contracts awarded by a State agency or School Food Authority in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as implemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The State agency or School Food Authority shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The State agency or School Food Authority shall report all suspected or reported violations to the Department;

(6) Where applicable, all contracts awarded by State agencies or School Food Authorities in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as implemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of that act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation;

(7) Contracts awarded by State agencies or School Food Authorities, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters;

(8) All negotiated contracts (except those of $10,000 or less) awarded by State agencies or School Food Authorities shall include a provision to the effect that the State agency or School Food Authority, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the Program for the purpose of making audits, examination, excerpts, and transcriptions;

(9) Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857B et seq.). Suspected violations shall be reported by the State agency or School Food Authority in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(o) State agencies or School Food Authorities shall observe their regular requirements and practices with respect to bonding and insurance.

NOTE.—The Food and Nutrition Service has determined that this document does not contain major proposals requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Program No. 10.555, National Archives Reference Services.)

Dated: December 19, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-36201 Filed 12-28-78; 8:45 am]

[3410-02-M]

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the rules and regulations to permit the optional use of upward adjustments by handlers in Districts 1 and 3, during the balance of the 1978-79 season, of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

DATES: Effective January 1, 1979, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: On December 6, 1978, notice was published in the FEDERAL REGISTER (43 FR 57156) inviting written comments on a proposed amendment to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 910.100-910.180) currently effective pursuant to the applicable provisions of 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. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment of said rules and regulation was recommended by the Lemon Administrative Committee, established under the order as the agency to administer its terms and provisions.

Under the order the prorate base of each handler is based upon his average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks

preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that the handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received. The order provides in § 910.53(h) that the percentage of adjustment, currently set at not to exceed 50 percent in §§ 910.53(f)(1) and 910.153(e)(3), may be changed.

The committee reports that, due to the conditions expected to prevail during the balance of the 1978-79 season, the percentage of adjustment permitted should be changed to permit the optional use of upward adjustments by handlers in Districts 1 and 3 of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This added flexibility would be provided by an amendment to § 910.153(e)(3) Subpart—Rules and Regulations (7 CFR Part 910.100-910.180).

After consideration of all relevant matters presented, including the proposal in the notice and other available information, it is hereby found that amendment of said rules and regulations is in accordance with the marketing agreement and order and will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the handling of lemons is now in progress subject to regulated weekly allotment provisions of the order and to be of maximum benefit the provisions of this amendment should become effective at the time specified herein, (2) the recommendation of the committee was made at a public meeting at which all interested parties were afforded an opportunity to attend, and (3) the effective time hereof will not require of handlers any preparation that cannot be completed prior thereto.

Therefore, § 910.153 is amended to read as follows:

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of his average weekly pick: *Provided,* however, that during the period January 1, 1979, through July 31, 1979, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. * * *

* * * * *

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

Dated: December 26, 1978, to become effective January 1, 1979.

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

[FR Doc. 78-36383 Filed 12-28-78; 8:45 am]

[3410-34-M]

Title 9—Animals and Animal Products

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

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

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE AREA QUARANTINED

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments quarantine the Northern Mariana Islands because of the existence of vectors of splenetic or tick fever. This action is of an emergency nature and is deemed necessary to prevent the spread of the disease.

EFFECTIVE DATE: December 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Glen O. Schubert, Chief Staff Veterinarian, Bacterial and Parasitic Diseases, Sheep, Goat, Equine, and Ectoparasites Staff, Room 737, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8322.

SUPPLEMENTARY INFORMATION: These amendments quarantine the Northern Mariana Islands because of the existence of cattle fever ticks which are vectors of splenetic or tick fever. This action is deemed necessary to prevent the spread of the disease. The restrictions pertaining to the interstate movement of cattle and certain materials from quarantined areas as contained in 9 CFR Part 72, as amended, will apply to the quarantined area.

Accordingly, §§ 72.2 and 72.3 of Part 72, Title 9, Code of Federal Regulations, as amended, which quarantined portions of the State of Texas, the Virgin Islands of the United States, the Commonwealth of Puerto Rico and the Island of Guam because of splenetic or tick fever in cattle, a contagious, infectious, and communicable disease, or because of the existence of vectors of said disease, are hereby amended in the following respects:

1. In § 72.2, the section heading and the text are amended to read:

§ 72.2 Splenetic or tick fever in cattle in Texas, the Virgin Islands of the United States and vectors of said disease in the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Island of Guam: Restrictions on movement of cattle.

Notice is hereby given that the contagious, infectious, and communicable disease known as splenetic or tick fever exists in cattle in portions of the State of Texas and the Virgin Islands of the United States. Notice is also hereby given that ticks which are vectors of said disease exist in the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Island of Guam.

Therefore, portions of the State of Texas, the Virgin Islands of the United States, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Island of Guam are hereby quarantined as provided in §§ 72.3 and 72.5, and the movement of cattle therefrom into any other State or Territory or the District of Columbia shall be made only in accordance with the provisions of this part and Part 71 of this chapter.

2. In § 72.3, the section heading and the text are amended to read:

§ 72.3 Areas quarantined in the Virgin Islands of the United States, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Island of Guam.

The entire Territories of the Virgin Islands of the United States and the Island of Guam, the Northern Mariana Islands, and the Commonwealth of Puerto Rico are quarantined.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113,

115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendments impose certain further restrictions of an emergency nature necessary to prevent the spread of splenetic or tick fever in cattle, and must be made effective immediately to accomplish their purpose in the public interest.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making them effective before January 29, 1979.

Done at Washington, D.C., this 20th day of December 1978.

NOTE-This final rulemaking is being published under emergency procedures as authorized by E.O. 12044. It has been determined by Dr. J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the introduction of splenetic or tick fever from the Northern Mariana Islands into States or Territories of the United States is severe enough to warrant the publication of this quarantine without waiting for public comment. An impact analysis statement is being prepared and will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301-436-8695. In addition, this amendment to the regulations covering splenetic or tick fever will be scheduled for review under provisions of E.O. 12044.

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

[FR Doc. 78-35935 Filed 12-28-78; 8:45 am]

[3410-34-M]

PART 78—BRUCELLOSIS

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

BRUCELLOSIS AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

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

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

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

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

The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Certified Brucellosis-Free Areas in § 78.20 because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area in § 78.1 (l): Grant County in Arkansas; Leavenworth County in Kansas; Burt and Washington Counties in Nebraska; and Tom Green County in Texas.

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

§ 78.20 Certified Brucellosis-Free Areas.

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

(a) *Entire States.*

Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, 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, Marion, Monroe, Montgomery, Newton, Ouachita, Searcy, Sharp, Stone, Union.

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

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

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

Illinois. Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, De Witt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kane, Kankakee, Kendall, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, 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, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Plymouth, Sac, Scott, Shelby, Sioux, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright.

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

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

Mississippi. Alcorn, Harrison.

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

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

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

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

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

Texas. Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hemphill, Hudspeth, 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, Tom Green, Val Verde, Ward, Winkler, Yoakum.

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

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

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

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

§ 78.21 Modified Certified Brucellosis Areas.

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

(a) *Entire States.*

Alaska, Louisiana, Oklahoma.

(b) *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 Springs, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White, Woodruff, Yell.

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

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

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

Illinois. Jo Daviess, Knox, Massac.

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

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

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmon-

son, 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, Chicksaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, 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, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishimingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

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

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

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

South Dakota. Jones, Stanley.

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

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

Utah. Box Elder, Garfield.

Vermont. Addison, Chittenden, Franklin, Orleans.

Wyoming. Lincoln.

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

§ 78.22 Noncertified Areas.

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

(a) *Entire States.* Yellowstone National Park.

(b) *Specific Counties Within States. Florida.* Highlands, Okeechobee.

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

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

Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective before January 29, 1979.

Done at Washington, D.C., this 21st day of December 1978.

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

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-36043 Filed 12-28-78; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

[Docket No. ERA-R-77-15]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Amendment to Permit the Passthrough by Service Station Operators of Costs for Vapor Recovery Systems and Increased Service Station Rents; Effective Date

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby provides notice that the final rule permitting retail gasoline dealers to pass through increased costs associated with installation of vapor recovery systems and rent increases, the effective date of which had been suspended, will become effective January 1, 1979.

DATES: Effective January 1, 1979. Comments by February 15, 1979, 4:30 p.m.

ADDRESS: All comments to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-77-15, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634-2170.

Chuck Boehl (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2304, Washington, D.C. 20461, (202) 254-7200.

Ben McRae (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 5134, Washington, D.C. 20461, (202) 633-8622.

SUPPLEMENTARY INFORMATION:

I. Background
II. Effective Date
III. Comments

I. Background

On October 22, 1978, the ERA issued a final rule (43 FR 50662, October 30, 1978), which was to have been effective on December 1, 1978, permitting retail gasoline dealers to pass through rent increases and the costs of vapor recovery systems incurred since May 15, 1973. This rule was inadvertently issued notwithstanding that the Federal Energy Regulatory Commission (FERC) had not yet determined, in accordance with section 404(a) of the Department of Energy Organization Act, whether it might significantly affect a function within its jurisdiction. Accordingly, on November 24, 1978, we issued a notice (43 FR 55744, November 29, 1978) to suspend the December 1 effective date of the rule in order to permit the FERC until December 20, 1978 to make its determination under section 404(a). The November 24 notice specified that if the FERC determined by that date that the proposed rule would not significantly affect such a function, or if it failed to make a determination by that date, it was our intention to make the rule effective on January 1, 1979.

II. Effective Date

The FERC has informed us that as of December 20, 1978 it has not determined that the proposed rule might significantly affect a function within its jurisdiction. Therefore, we are hereby making this rule effective January 1, 1979. The final rule is the same as the rule that was issued on October 22, 1978, except for changes to reflect an effective date of January 1, 1979 instead of December 1, 1978. Details on the operation of the rule may be found in the supplementary information section of the October 22 notice.

III. Comments

Comments on this rule will be accepted through February 15, 1979, as set forth in the October 22, 1978 notice. You should follow the comment procedures set forth in that notice.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385, Federal Energy Administration Act of 1974, Pub. L. 93-275, and amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267).

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective January 1, 1979.

Issued in Washington, D.C., December 22, 1978.

David J. Bardin,
Administrator, Economic Regulatory Administration.

1. Section 212.83(c)(2)(iii)(E) is amended by adding definitions of "F_it", "N_is" and "N_ir" at the end of the "N" factor to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *
(2) *Formulae.* * * *
(iii) *Definitions.* * * *
(E) *The "N" factor.* * * *

F_it=the marketing cost increase and is the difference between the cost of marketing covered products in the month of measurement and the cost of marketing covered products in the month of May 1973. "Cost of marketing covered products" means the costs attributable to marketing operations with respect to covered products: *Provided,* That such costs are included only to the extent that they are so attributable under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned and are not included in computing May 15, 1973 prices, in computing increased product costs, or in computing other increased non-product costs. A refiner must prepare a schedule itemizing the principal costs included in this category and describing the accounting procedures by which they are calculated. The amount of marketing cost increase which may be applied to compute maximum allowable prices for covered products is, however, limited to the extent that such marketing cost increases may:

(I) Allow an increase in the prices of No. 2 heating oil and No. 2-D diesel fuel above the prices otherwise permitted to be charged for such products pursuant to the provisions of this part by an amount not in excess of one cent per gallon with respect to retail sales and one-half cent per gallon with respect to all other sales; and

(II)(aa) Allow an increase in the price of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to this part by an amount equal to increased rental cost (as defined in § 212.92) plus vapor recovery system cost (as set forth in § 212.92) plus an amount not in excess of three cents per gallon (for marketing costs not otherwise recoverable under this subpart) with respect to all retail sales; and

(bb) Allow an increase in the price of gasoline, during the 360-day period commencing November 19, 1975, above the prices otherwise permitted to be charged for gasoline pursuant to this part (including paragraphs (I) and (II)(aa) of this definition) by an amount not in excess of two cents per gallon in retail sales in Alaska; and

(III) Allow an increase in the prices of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to the provisions of this part by an amount not in excess of three-quarter cent per gallon with respect to all sales other than retail sales; and

(IV) Allow an increase in the prices of middle distillates above the prices otherwise permitted to be charged for middle distillates pursuant to the provisions of this part (including the foregoing paragraph (I) of this definition) by an amount not in excess of one cent per gallon with respect to retail sales and not in excess of one-quarter cent per gallon with respect to all other sales, except that, with respect to retail sales of aviation fuels by fixed base operators after November 30, 1975, allow an increase in the amount otherwise permitted to be charged for that item pursuant to the provisions of this part by an amount not to exceed four cents per gallon; and

(V) Allow an increase in the prices of residual fuel oil above the prices otherwise permitted to be charged for residual fuel oil pursuant to the provisions of this part by an amount not in excess of three-fourths cent per gallon with respect to retail sales and one-fourth cent per gallon with respect to all other sales; and

(VI) Allow an increase in the price of propane, in sales after September 30, 1975, above the prices otherwise permitted to be charged for propane pursuant to the provisions of this part by an amount not in excess of three cents per gallon with respect to all retail sales except those to the petrochemicals industry, to public utilities, and to synthetic natural gas plants; one cent per gallon with respect to retail sales to the petrochemicals industry, to public utilities, and to natural gas plants and one-half cent per gallon with respect to all other sales; and

(VII) Reflect the total dollar amount of non-product costs attributable to includable amounts of commissions incurred during the period "t" beginning with January 1, 1976 with respect to sales through consignee-agents of the covered product or products of the type "i". The includable amount of commission incurred with respect to each item sold through each consignee-agent is the dollar amount per unit of volume by which the commission in the period "t" exceeds the commission in effect on May 15, 1973: *Provided,* That the includable amount shall be an amount reasonably intended to cover increased non-product costs of the consignee-agent, and that it shall not exceed the amount of the non-product cost price increase that would be permitted if the consignee-agent took title to the product it distributes and were a seller subject to § 212.93(b).

$N_i s$=the total increased non-product costs attributable to the specific covered product or products of the type "i" computed under "$N_i t$" for the month preceding the month of measurement ("s") beginning on or after January 1, 1976 but not recovered in sales of that product during the period "t".

$N_i r$=the total increased non-product costs attributable to the specific covered product or products of the type "i" computed under "$N_i t$" for all months through the month two months before the month of measurement ("r") beginning on or after January 1, 1976 but not recovered in sales of that product through the period "t".

* * * * *

2. Section 212.92 is amended by adding, in appropriate alphabetical order, definitions of "increased rental cost" and "vapor recovery system cost" to read as follows:

§ 212.92 Definitions.

* * * * *

"Increased rental cost" means the rent, in terms of cents per gallon, with respect to that portion of real property leased for purposes of retail gasoline sales, paid to an independent lessor for the calendar month preceding the calendar month in which gasoline is sold minus the rent, stated in terms of cents per gallon, with respect to the same real property leased for purposes of retail gasoline sales, paid to an independent lessor for the month of May 1973. For purposes of this paragraph, "independent lessor" means a lessor which is not directly or indirectly controlled by the lessee concerned or by any firm which directly or indirectly controls that lessee.

* * * * *

"Vapor recovery system cost" means the unrecovered installation and purchase cost incurred by the seller since May 15, 1973 with respect to a gasoline vapor recovery system required by a Federal, state, or local governmental authority. For purposes of this paragraph, the cost incurred with respect to a vapor recovery system may be recovered in one month or may be prorated over a period of months. Each seller will be required to establish an accounting method by which vapor recovery costs shall be recovered. Once the method is established, the seller will apply the method consistently over the period for the recovery of costs. A seller may not recover in sales of gasoline a total amount attributable to such costs which exceeds the seller's actual vapor recovery system cost. In any one month, the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and shall be deemed to have been recovered on, each gallon of gasoline sold and for purposes of § 212.83(f) shall be deemed to have been recovered before all other non-product costs.

3. Section 212.93 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii)(A) and by adding new paragraphs (b)(1)(ii)(C) and (b)(1)(ii)(D) to read as follows:

§ 212.93 Price rule.

* * * * *

(b) * * *

(1) With respect to No. 2 oils and gasoline: (i) in retail sales, a seller may charge one cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section, and, with respect to all other sales a seller may charge one-half cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section to reflect non-product cost increases that the seller incurred after May 15, 1973: *Provided,* That, subsequent to January 1, 1979, such non-product cost increases shall not include those costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

(ii)(A) Beginning with March 1974, in all retail sales of gasoline, a seller may charge two cents per gallon of gasoline in excess of the amount otherwise permitted to be charged for that item pursuant to this section, including paragraph (b)(1)(i) of this section, to reflect increases in non-product costs incurred by the seller concerned since May 15, 1973: *Provided,* That, subsequent to January 1, 1979, such non-product cost increases shall not include those nonproduct costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

* * * * *

(C) Beginning January 1, 1979, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) of this paragraph (b)), which reflects increased rental costs not otherwise recovered.

(D) Beginning January 1, 1979, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) and (C) of this paragraph (b)), which reflects a portion of vapor recovery system cost as set forth in § 212.92 not otherwise recovered.

[FR Doc. 78-36284 Filed 12-26-78; 2:33 pm]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-1089; Docket 31479; Reissuance of Part 263]

PART 263—PARTICIPATION OF AIR CARRIER ASSOCIATIONS IN BOARD PROCEEDINGS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: Associations will be allowed to represent their members in Board proceedings on the basis of informal authorizations, which need not be provided to the Board except on request. The purpose of the change is to reduce the burden and expense of Associations' participation in Board proceedings. These rules will apply only to associations of direct air carriers.

DATES: Effective: January 29, 1979. Adopted: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: 14 CFR Part 263 provides that an air carrier association may not participate in Board proceedings to present the views of its members unless: (1) its articles of association authorizing such participation are approved by the Board (§ 263.2), and (2) the Board upon motion or its own initiative grants leave to participate (§ 263.3). The Board will approve the articles of association and grant leave only if each carrier signs and submits a copy of resolution authorizing the association's participation. This requirement can be satisfied by the filing of a power of attorney signed by an authorized officer of each carrier to be represented. Section 263.3(3) provides that, upon motion of any interested person or upon its own initiative, the Board can require the association to withdraw from the case because of significant difference of interest or position among its members.

A Petition for Rulemaking was filed by National Air Carrier Association to relax the authorization requirements. NACA argued that implementation of Part 263 requirements imposed a considerable burden and expense on it and its members. NACA's petition requested that an attorney representing a member air carrier be permitted to execute a power of attorney on behalf of his client, or allow an officer of the air carrier association to certify that he has communicated with an authorized official of each carrier to be represented, and that each carrier has knowledge of and consents to representation by the association in that proceeding.

In accordance with the petition the CAB proposed to amend 14 CFR Part 263 to allow associations of air carriers to represent their members in Board proceedings on the basis of informal authorizations, which need not be provided to the Board except on request (EDR-345, February 15, 1978, 43 FR 7445, February 23, 1978). The Board also proposed, on its own initiative, to amend the rule to apply only to associations of direct air carriers.

Comments were filed in general support of the proposed amendments by National Air Transportation Association (NATA), United States Tour Operators Association (USTOA), Air Freight Forwarders Association of America (AFFA), American Society of Travel Agents (ASTA), and Commuter Airline Association of America (CAAA). The Air Transportation Association of America (ATA) suggested several modifications of Part 263, the first was to insure that a carrier is fully cognizant of the association's representation and fully consents to it: authorization coming from a duly authorized officer, or from the carrier's internal legal staff, or from outside retained counsel. The second was that a written memorial of all informal authorizations should be prepared by the carrier and forwarded to the association no later than 1 week following that authorization. ATA stated that the Board and the public were entitled to rapid assurance that an air carrier association is conducting its representational activities properly.

The Board has considered both the alternative procedures suggested by NACA and the modifications suggested by ATA, and has concluded that formal filings such as certifications and powers of attorney are unnecessary in this area. Also, the "safeguards" proposed by ATA, if adopted, would place procedural requirements upon associations that we find now to be unnecessary. Considering the sanctions in Federal law and Board regulations (e.g., 14 CFR Part 300) that would apply to any misrepresentations in Board proceedings, additional safeguards do not appear to be necessary.

The Board proposed to amend Part 263 to limit its application to associations of direct air carriers, removing groups such as charter operators from the rule. An air carrier association is now defined in Part 263 as "an association composed entirely or in part of air carriers which are not exempted from the provisions of Section 412 of the Act in respect of relationships between one another." Various charter regulations adopted by the Board have created a new class of carriers not originally contemplated in the regulation: charter operators who are indirect air carriers of passengers. Although technically they are "air carriers" included in the Part 263 use of the term, their functional relationship to air transportation is comparable to the types of organizations the Part 263 preamble specifically excluded from coverage. The imposition of such a requirement on this segment of the industry's associations could make it much more difficult for the members to make their views known to the Board.

The Board, therefore, in this action is amending Part 263 to require: (1) that an association identify those members whom it is representing in a given proceeding, and (2) that its identification of those members be based on specific authorization with respect to the positions taken, which can be informal and need not be provided to the Board except on request. The Board also is amending Part 263 to limit application to associations of direct air carriers, thus removing groups such as charter operators from the rule.

Accordingly, 14 CFR Part 263, *Participation of Air Carrier Associations in Board Proceedings*, is revised and reissued to read as follows:

PART 263—PARTICIPATION OF AIR CARRIER ASSOCIATIONS IN BOARD PROCEEDINGS

Sec.

263.1 Definitions.
263.2 Approval of articles of association.
263.3 Participation.

AUTHORITY: Secs. 102, 204, 412, and 1001 of the Federal Aviation Act of 1959, as amended, 72 Stat, 740, 743, 770, and 788, 49 U.S.C. 1302, 1324, 1382, and 1481.

§ 263.1 Definitions.

(a) "Air carrier association" means an association composed entirely or in part of direct air carriers that are not exempted from the provisons of section 412 of the Act in respect of relationships between one another.

(b) "Board proceeding" means any proceedings of the Board to which the Board's procedural regulations apply.

§ 263.2 Approval of articles of associations.

An air carrier association created by agreement subject to approval under section 412 of the Act, its officers, or its employees may not participate in

Board proceedings unless its articles of association contain provisions approved by the Board authorizing such participation.

§ 263.3 Participation.

(a) An air carrier association may participate in a Board proceeding only if—

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Board of factual information gathered from the members, as distinguished from presentation of opinions or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Board, and that have specifically authorized the positions taken by the association in that proceedings. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Board.

(b) Upon motion of any interested person or upon its own initiative, the Board may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36356 Filed 12-28-78; 8:45 am]

[6320-01-M]

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Regulation PR-188; Amdt. 48 to Part 302]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Technical Changes to Rules Governing Enforcement Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board amends its rules of practice in enforcement proceedings to insure that the names of certain documents accurately reflect their substance, to provide procedures for review of decisions by administrative law judges granting summary judgment or dismissing enforcement proceedings, and to modify the requirement that complaints be verified.

DATES: Adopted: December 21, 1978. Effective: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5158.

SUPPLEMENTARY INFORMATION: The Board's rules of practice governing enforcement proceedings include outmoded terminology that may be confusing to persons trying to understand the rules and certain formal requirements that no longer serve any purpose. The rules also fail to specify procedures for appealing to the Board from action by an administrative law judge granting summary judgment or dismissing an enforcement proceeding. The purpose of these technical and editorial amendments is to correct some of these problems in order to make the rules easier to understand and to follow.

The rules refer to Petitions for Enforcement and to letters dismissing complaints, yet those names do not accurately reflect the nature and purposes of the documents they identify. Since both of these documents serve as notices, we are amending our regulations to call them notices. Also, the requirement that a notice of dismissal must conform to the requirements of § 302.3, regarding the place and formal specifications for filing documents with our Docket Section, is unnecessary and has been deleted. These amendments are editorial, and are not intended to make any substantive changes in the contents or functions of the documents.

In 1976, when we amended the rules to provide for motions for summary judgment and motions to dismiss in enforcement proceedings, we inadvertently failed to specify the procedures for seeking Board review of actions by the administrative law judges granting such motions. Since such actions are dispositive and have the same effect as initial decisions, we are providing that the same review procedures are available. We are also conforming the times provided for initiating Board review of action dismissing a third-party complaint to those provided for review of other dispositive actions by the staff.

In addition, we are modifying the requirement for verification of formal complaints, answers and other pleadings in enforcement proceedings to conform with a recent legislative change. Under 28 U.S.C. 1746, execution under penalty of perjury may be used in place of any sworn declaration or affidavit required by any law or rule of the United States. We are therefore providing that verification may be made under penalty of perjury or under oath.

Since this amendment is administrative in nature, affecting rules of agency procedure, we find that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends Subpart B of Part 302 of its Procedural Regulations (14 CFR Part 302) as follows:

1. We amend § 302.201 by revising the third and fifth sentences so that the section reads:

§ 302.201 Formal complaints.

Any person may make a formal complaint to the Board with respect to anything done or omitted to be done by any person in contravention of any economic regulatory provisions of the act, or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The submission of a formal complaint by a person other than an attorney from the Bureau of Consumer Protection (hereinafter called a third party) shall not in itself result in institution of a formal economic enforcement proceeding and a hearing with respect to the complaint unless and until the Director of the Bureau of Consumer Protection issues a notice instituting an enforcement proceeding with respect to such complaint, or a portion thereof, or the Chief Administrative Law Judge takes such action in accordance with § 302.206(b). A formal complaint, whether filed by a third party or an attorney from the Bureau of Consumer Protection, may be amended at any time prior to the service of an answer to a complaint. Thereafter, such amendment may be filed only upon the grant of a motion filed in accordance with § 302.18, except that permission to amend a third-party complaint after the filing of an answer but before the filing of a notice instituting an enforcement proceeding must be obtained from the Director of the Bureau of Consumer Protection.

2. We revise § 302.202 to read:

§ 302.202 Subscription and verification.

Every formal complaint, supplemental complaint, answer, or other pleading filed in an economic enforcement proceeding shall be signed by the party filing the same, or by a duly authorized officer, agent or attorney of such party. In addition, such documents shall be verified under penalty of perjury or under oath by the person so signing. Such verification shall set forth that the person verifying the document has read the document and the attached exhibits, if any, and knows their contents, and that the matters contained in the document are true or, if stated on information and belief, that he believes them to be true. If the subscription or verification is made by anyone other than the

party filing the document or an officer or attorney of that party, the reason must be stated and that person's power of attorney or other authority to make the subscription or verification must be filed with the document.

3. We amend § 302.204 by revising paragraph (d) to read:

§ 302.204 Third-party complaints.

* * * * *

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

4. We revise § 302.205 to read:

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Director of the Bureau of Consumer Protection shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.205(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of the Board 30 days after service thereof, unless review of such ruling is requested by the complainant or is initiated by the board in accordance with the provisions of paragraph (c) of this section.

(c) Within 21 days after service of a notice dismissing a complaint in whole or in part pursuant to paragraph (a) of this section, the complainant may file a motion with the Board to review such action. The proceedings on such motion shall be in accordance with § 302.18. Upon conclusion of such proceedings, the Board shall enter an order either affirming the dismissal of the complaint or directing such other action as it deems appropriate. If a complainant does not appeal, the Board may review the action of the Director of the Bureau of Consumer Protection on its own initiative within 30 days after service thereof.

5. We amend § 302.206 by revising the heading and paragraph (a) to read:

§ 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Director of the Bureau of Consumer Protection there are reasonable grounds to believe that any provision of the act or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that investigation of any or all of the alleged violations is in the public interest, the Director of the Bureau of Consumer Protection may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint verified by an attorney from the Bureau of Consumer Protection. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Board to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

* * * * *

6. We amend § 302.207 by revising paragraph (a) to read:

§ 302.207 Answer.

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with the Board in accordance with § 302.17.

* * * * *

7. We revise § 302.208 to read:

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Board, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such order as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the Board or administrative law judge may permit late filings of an answer for good cause shown.

8. We amend § 302.212 by adding a new paragraph (c):

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

* * * * *

(c) Parties may petition the Board to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

(Sections 204, 1001, 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, 788; 49 U.S.C. 1324, 1481, 1482.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36357 Filed 12-28-78; 8:45 am]

[6320-01-M]

[Regulation PR-189; Amdt. 49 to Part 302]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Number of Copies To File in Enforcement Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. December 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends Part 302 of the Board Procedural Regulations to reduce the number of copies of pleadings which must be filed in Economic Enforcement Proceedings from an original and 19 copies to an original and 5 copies.

DATES: Adopted: December 21, 1978. Effective: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5158.

SUPPLEMENTARY INFORMATION: The rules of practice now applicable to formal proceedings before the Board, including third-party complaints and enforcement proceedings, require that, unless otherwise specified, an original and 19 copies of each document must be filed with the Docket Section. We are concerned that this multiple copy requirement may inhibit persons with grievances that may involve violations of the Federal Aviation Act or our regulations or orders from filing formal complaints with the Board. Third-party complaints, answers, and similar documents filed in the early stages of an enforcement case are not of great

usefulness to Members of the Board or staff components other than the Bureau of Consumer Protection and the Administrative Law Judges. We do not believe that the Board's need for copies of documents in this type of proceeding is sufficient to justify retaining the present requirement. Therefore, we are amending our regulations to require that only an original and 5 copies of documents need be filed in enforcement proceedings. This smaller number of copies has been allowed without problems in proceedings such as *Eastern Air Lines Enforcement Proceeding*, Dockets 26368, et al. Those who wish to may, of course, continue to file a greater number of copies as a courtesy.

Since this amendment is administrative in nature, affecting a rule of agency procedure, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, the Civil Aeronautics Board amends Part 302 of its Procedural Regulations, *Rules of Practice in Economic Proceedings*, (14 CFR Part 302) as follows:

Paragraphs (c) of § 302.3 is amended to read:

§ 302.3 Filing of documents.

* * * * *

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section, except that an original and five (5) copies of third-party complaints, answers, documents dealing with discovery, and motions addressed to an Administrative Law Judge may be filed in proceedings under Subpart B—Rules Applicable to Economic Enforcement Proceedings.

* * * * *

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

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36358 Filed 12-28-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 377—SHORT SUPPLY CONTROLS

Reporting of Exports of Cobalt and Related Commodities

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

ACTION: Final rule.

SUMMARY: These regulations establish a requirement that exporters of cobalt and related commodities mail a copy of each Shipper's Export Declaration they file upon export direct to the Office of Export Administration. The Shipper's Export Declaration will assist that Office in assessing the impact of such exports on domestic availability and price in the face of tightening world supplies.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 3(2)(A) of the Export Administration Act of 1969, as amended, declares that "It is the policy of the United States to use export controls . . . to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand . . ." Section 4(c)(1) of the Act further provides that, to effectuate the policy set forth in Section 3(2)(A), the Secretary of Commerce shall monitor exports of any non-agricultural article, material, or supply "when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof." Section 4(c)(1) further provides that "such monitoring shall commence at a time adequate to insure that data will be available which is sufficient to permit achievement of the policies of this Act." Section 7 provides authority to obtain information necessary or appropriate to the enforcement of the Act and provides in subsection (d) that "In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics."

The Department has reviewed the current and prospective supply and export situation for cobalt and related commodities and, after consulting with other appropriate federal agencies, has determined that it is necessary to obtain more adequate and timely information on the export of such commodities that it is presently receiving in order to carry out the purposes of the Export Administration Act. Accordingly, under authority of the Export Administration Act, a procedure is established which requires exporters of cobalt and related commodities to all destinations, including Canada, to forward directly to the Office of Export Administration a copy of each Shipper's Export Declaration which they file with the exporting carrier (or the post office if shipment is made by mail) and to indicate on that copy of the Declaration the actual cobalt content of the commodities listed thereon and any intended reexport of the commodities of which they have knowledge. Exporters are further required to advise the Office of Export Administration in writing of any reexports of such commodities of which they become aware after filing the Shipper's Export Declaration.

While the Department has the authority to monitor exports through a weekly or monthly reporting program, it believes that under current circumstances the use of an extra copy of the Shipper's Export Declaration in lieu of a separate monitoring report will minimize the reporting burden on industry and is a more appropriate and effective way of obtaining the required detailed data on exports of these commodities on a current basis.

Exporters are reminded in this connection of the recordkeeping requirements of § 387.11 of the Export Administration Regulations and they are specifically advised that it is the Department's intention to request additional information from the exporter or his agent in any instance where the Shipper's Export Declaration appears to have been improperly completed or where relevant information required to be shown thereon is either lacking or not clear.

This reporting requirement takes effect with respect to any Shipper's Export Declaration covering the cobalt or related commodities containing 10 percent or more cobalt listed in Supplement No. 1 to Part 377 of the Export Administration Regulations, which the exporter or his agent files

with the exporting carrier (or the post office if shipment is made by mail) after 12:01 AM EDT January 10, 1979. Exporters are required to mail a copy of each such Shipper's Export Declaration to the Office of Export Administration within 24 hours of filing the original Shipper's Export Declaration with the exporting carrier (or the post office). Unless already shown thereon, the actual cobalt content of each commodity listed on the Shipper's Export Declaration and, if the exporter knows that any portion of the commodities are destined to be reexported, that fact together with the ultimate country of intended destination, if known, must be added to that copy of the Declaration before it is placed in the mail.

The action announced herein is taken without notice of proposed rulemaking and opportunity for comment because Section 8 of the Export Administration Act provides an exemption from such requirements. However, written comments on this action are solicited on a continuing basis. Interested parties are encouraged to submit written comments, views, or data concerning the regulations to the U.S. Department of Commerce, Office of Export Administration, Attention: Short Supply Division, Room 1617A, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. All such material should be submitted in triplicate.

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

1. A new § 377.5 is established to read as follows:

§ 377.5 Cobalt and related commodities.

(a) Submission to Office of Export Administration of Copy of Shipper's Export Declaration.—Upon filing a Shipper's Export Declaration* covering the export from the United States to any destination, including Canada, of one or more of the cobalt or related commodities listed in Supplement No. 1 to this Part 377, exporters are required to mail a copy of the Shipper's Export Declaration filed with the exporting carrier (or the Post Office if shipment is made by mail), to the Office of Export Administration at the following address:

Office of Export Administration, Attention: Short Supply Division, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

Each such copy of the Shipper's Export Declaration should be a true copy of the signed original except that, if the signed original did not contain the information required under subsection (b) below, this information must be added to the copy of the Declaration mailed to the Office of Export Administration. The envelope in which this copy is mailed must be clearly marked on the exterior "Cobalt Export Report." If a correction is made in a Shipper's Export Declaration after a copy thereof has been mailed to the Office of Export Administration, a copy of such corrected Declaration containing the additional information required by subsection (b) below and conspicuously marked in the upper right hand portion of the form "CORRECTION COPY," must be mailed to the Office of Export Administration.

(b) Additional Information to be Shown on Copy of Shipper's Export Declaration Mailed to Office of Export Administration.—Each copy of a Shipper's Export Declaration covering an export of one or more of the cobalt and related commodities listed in Supplement No. 1 to this Part 377, which is sent to the Office of Export Administration pursuant to subsection (a) above, must show—separately for each separate cobalt and related commodity shown thereon—the cobalt content of such commodity in pounds. If this information is not already shown on the copy of the original Declaration which was filed with the exporting carrier (or the post office), it must be added to the copy of that Declaration which is mailed to the Office of Export Administration. In addition, if the exporter or his agent has reason to believe that the commodities listed on the Declaration, or any portion of such commodities, will be reexported, that information, together with the intended new country of destination if known, must be noted on the copy of the Declaration which is mailed to the Office of Export Administration.

(c) Deadline for Submission.—The copy of the Shipper's Export Declaration to be mailed to the Office of Export Administration must be placed in the U.S. mails by the exporter or his agent within 24 hours of the filing of the original Declaration with the exporting carrier (or post office). Similarly, a copy of each corrected Declaration must be mailed to the Office of Export Administration within 24 hours of filing the original of the corrected Declaration.

(d) Reporting of Reexports.—Should the exporter or his agent, after submitting a copy of a Shipper's Export Declaration for cobalt or related commodities to the Office of Export Administration as prescribed above, gain knowledge that the shipment covered by such Declaration, or any portion of such shipment, has been or will be reexported to a county of ultimate destination not previously reported to the Office of Export Administration pursuant to subsection (b) above, the exporter should immediately advise the Office of Export Administration (Attention: Short Supply Division) in writing of such actual or intended reexport.

(e) Recordkeeping.—Exporters are reminded that the recordkeeping requirements of § 387.11 of these Regulations are applicable to both exports and reexports of the cobalt and related commodities listed in Supplement No. 1 to this Part 377.

(f) Verification of Shipper's Export Declarations.—Should a copy of the Shipper's Export Declaration submitted to the Office of Export Administration lack any relevant information required to be shown thereon, be unclear or appear to have been completed incorrectly, the Office of Export Administration will communicate directly with the exporter or his agent in order to clarify the transaction.

(g) Confidentiality.—Any information or documentation submitted by the exporter under this section will be deemed confidential information under Section 7(c) of the Export Administration Act of 1969, as amended.

* * * * *

2. A new Supplement No. 1 to Part 377 is established to read as follows:

SUPPLEMENT NO. 1 TO PART 377

COBALT AND RELATED COMMODITIES SUBJECT TO EXPORT REPORTING WHEN THEY CONTAIN 10 PERCENT OR MORE COBALT [1]

Schedule B Number	Commodity Description	Unit
418.6100	cobalt oxides and hydroxides (except pigment grades)	pounds
418.6300	cobalt molybdate catalysts	pounds
472.6000	cobalt oxides and hydroxides (including pigment grades)	pounds
620.0300	unwrought nickel	pounds
620.0400	nickel waste and scrap	pounds
620.0600	plates, sheets, and strip, all the foregoing wrought, of nickel, whether or not cut, pressed, or stamped to nonrectangular shapes or clad.	pounds
620.1800	bars, rods, angles, shapes, and sections, all the foregoing wrought, of nickel.	pounds
620.2700	wire of nickel	pounds
620.4100	pipes, tubes, blanks, and fittings of nickel	pounds
630.3020	cobalt and cobalt alloys, unwrought and waste and scrap (includes but is not limited to cobalt metal, briquettes, electrolytic lumps and shot, rondelles, broken cathodes, granular forms and powders, including ultra-fine).	pounds

*See Part 386 of the Export Administration Regulations for provisions relating to filing of Shipper's Export Declarations.

SUPPLEMENT NO. 1 TO PART 377—Continued

COBALT AND RELATED COMMODITIES SUBJECT TO EXPORT REPORTING WHEN THEY CONTAIN 10 PERCENT OR MORE COBALT [1]

Schedule B Number	Commodity Description	Unit
630.3050	cobalt and cobalt alloys, wrought	pounds
630.6020	tantalum alloy powder	pounds
630.6040	tantalum alloy, unwrought and waste and scrap	pounds
630.6060	tantalum alloy wrought	pounds
630.7010	tungsten alloy powder	pounds
630.7020	tungsten alloy wire	pounds
630.7060	tungsten alloy, unwrought and waste and scrap	pounds
630.7080	tungsten alloy, other	pounds
422.4000	tungsten carbide	pounds
422.4200	other tungsten compounds	pounds
423.1090	tantalum carbide powder	pounds

[1] Commodity description, not Schedule B Number, is determinative of the commodity subject to export reporting.

3. Section 386.3(f)(3) is revised to read as follows:

§ 386.3 Shipper's export declaration.

* * * * *

(f) * * *

(3) *Additional copies of Declaration.*—The Office of Export Administration may require additional copies of the Declaration for exports under a validated license that contain special requirements for additional documents or information. (See §§ 371.17(f)(2)(i), 373.2(f)(1), and 386.3(o).) Additional copies of the Declaration may also be required for commodities subject to the provisions of Part 377 of these Regulations. For exports from the United States to foreign countries made via Canada an additional copy of the Declaration must be submitted to Canadian authorities. (See § 374.6.)

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

STANLEY J. MARCUSS,
Deputy Assistant Secretary, for Trade Regulation.

[FR Doc. 78-36329 Filed 12-28-78; 8:45 am]

[3510-25-M]

Part 371—General Licenses

Part 373—Special licensing Procedures

Part 379—Technical Data

Part 385—Special Country Policies and Provisions

Part 386—Export Clearance

Part 399—Commodity Control List and Related Matters

Miscellaneous Corrections

AGENCY: Industry and Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule provides authority citations inadventently omitted from documents at time of publication.

EFFECTIVE DATE: Retroactive with issuance of documents referenced below.

FOR ADDITIONAL INFORMATION CONTACT:

Maurice E. Schweinhart, Office of Management and Systems, Industry and Trade Administration, Department of Commerce, Washington, D.C. 20230, 202-377-3585.

In Federal Register documents appearing at page 7311 of February 22, 1978, FR Doc. 78-4697, amending Parts 371, 373, 379, 385, 386, and 399 and at page 10340 of March 13, 1978, FR Doc. 78-6484, amending Part 371, the authority citation should read as follows:

AUTHORITY: Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

In Federal Register document appearing at page 23991 of June 2, 1978, FR Doc. 78-15395, amending Part 315, the authority citation should read as follows:

AUTHORITY: Headnote 2, subpart B, part 6, schedule 6 of the Tariff Schedules of the United States (19 U.S.C. sec. 1202) relating to the development, maintenance, and publication of a list of bona fide motor-vehicle manufacturers, and authority to promulgate rules and regulations pertaining thereto under section 501(2) of Title V of the Automotive Products Trade Act of 1965 (19 U.S.C. sec. 2031).

FRANK A. WEIL,
Assistant Secretary for Industry and Trade.

[FR Doc. 78-36251 Filed 12-28-78; 8:45 am]

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER A—GENERAL

PART 1018—ADVISORY COMMITTEE MANAGEMENT AMENDMENT TO REGULATIONS

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's regulations on Advisory Committee Management to accommodate a new advisory committee, the Toxicological Advisory Board, which Congress authorized in recent legislation to provide specific scientific and technical advice to the Commission regarding the labeling of hazardous substances.

EFFECTIVE DATE: December 29, 1978.

SUPPLEMENTARY INFORMATION: Section 10 of the Consumer Product Safety Authorization Act of 1978 (Pub. L. 95-631) amended the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261, et seq.) to provide that the Commission shall establish a Toxicological Advisory Board to provide scientific and technical advice to the Commission on (1) precautionary labeling for hazardous substances subject to the FHSA and on (2) the exemption of certain substances from the labeling requirements under the FHSA. Accordingly, the Commission established the Toxicological Advisory Board on December 22, 1978 to continue for a period of six years. The Board is to be composed of nine members appointed by the Commission who shall be qualified by training and experience in one or more fields applicable to the duties of the Board. At least three of the members of the Board should be members of the American Board of Medical Toxicology. The Board will meet at least twice each year. The charter for the Toxicological Advisory Board was filed with the Congress, the Office of Management and Budget, and the Library of Congress on December 27, 1978.

The establishment of the Toxicological Advisory Board necessitates a number of revisions to the Commis-

sion's Advisory Committee Management Regulations (16 CFR Part 1018) which set forth the Commission's guidelines and policies regarding the management of its advisory committees. Namely, the revisions describe the newly established Board, its purpose and membership composition, and the terms of appointment.

Since the revisions to the Advisory Committee Management regulations merely reflect the statutory requirements for the Board's membership and composition, the Commission has determined that the notice and the public procedure requirement of 5 U.S.C. 553 is dispensed with and that the revisions shall be effective upon publication.

Accordingly, Title 16, Chapter II, Subchapter A, Part 1018 of the Code of Federal Regulations is amended as follows:

1. In Section 1018.12, the first sentence is revised and a new subparagraph (d) is added reading as follows:

§ 1018.12 Statutory advisory committees.

The Commission has four statutory committees:

* * * * *

(d) The Toxicology Advisory Board was established by the Commission on December 22, 1978, pursuant to section 20 of the Federal Hazardous Substances Act, as amended (Sec. 10, Pub. L. 95-631, 15 U.S.C. 12).

2. In § 1018.15, a new paragraph (d) is added reading as follows:

§ 1018.15 Membership composition.

* * * * *

(d) The Toxicological Advisory Board, as specified in section 20 of the Federal Hazardous Substances Act, as amended (Pub. L. 95-631, 15 U.S.C.), shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Commission will seek a balanced membership, including individuals representative of consumers, government, and industry.

3. In § 1018.17, a new subparagraph (d) is added reading as follows:

§ 1018.17 Appointments.

* * * * *

(d) Notwithstanding subparagraphs (b) and (c) above, members of the Toxicological Advisory Board shall be appointed for terms of three years. Members may be reappointed for a subsequent three-year term. Any vacancy on the Board shall be filled in the same manner in which the original appointment was made. Any person appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall serve only for the remainder of such term.

4. § 1018.21, the first sentence is revised as follows:

* * * * *

§ 1018.21 Calling of meetings.

Advisory committees shall, as a general rule, meet four times per year, except that, as provided by statute, the Toxicological Advisory Board shall meet not less than two times each year.

* * * * *

5. In Section 1018.25, a new paragraph (d) is added reading as follows:

§ 1018.25 Minutes and meetings reports.

* * * * *

(d) In addition to the information required by subsection (a) of this section, the minutes of the Toxicological Advisory Board shall specify the reasons for all conclusions reached and, where conclusions are not unanimous, the Board is encouraged to submit minority or dissenting opinions.

Dated: December 22, 1978.

SADYE E. DUNN,
Secretary.

[FR Doc. 78-36368 Filed 12-28-78; 8:45 am]

[6355-01-M]

PART 1030—EMPLOYEE STANDARDS OF CONDUCT

Amendment of Definition

AGENCY: Consumer Product Safety Commission.

ACTION: Amendment to final rule.

SUMMARY: The Commission's Employee Standards of Conduct regulations, in accordance with the Consumer Product Safety Act (CPSA), restricts certain employees from accepting employment or compensation from a manufacturer subject to the CPSA. In this document the Commission amends the definition of "manufacturer subject to the CPSA" to include manufacturers regulated by the Commission under any Act it administers.

EFFECTIVE DATE: December 29, 1978.

SUPPLEMENTARY INFORMATION: Section 4(g)(2) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2053(g)(2)) provides that employees who are compensated at a rate in excess of the annual rate of basic pay in effect for grade GS-14 of the General Schedule shall not accept employment or compensation from any manufacturer subject to the CPSA. This restriction applies for a period of twelve months after the employee leaves the Commission. It is designed to prevent people from seeking employment with the Commission or using their Commission employment to gain future employment with manufacturers subject to the CPSA or to acquire such manufacturers as future clients.

In February 1978 a former Commission employee subject to the section 4(g)(2) restriction requested the Commission's opinion on whether this section would prohibit the acceptance of employment with a manufacturer of drugs. By specific exception, drugs are excluded from the definition of "consumer product" under the CPSA (15 U.S.C. 2052(a)(1)(H)). Manufacturers of drugs are therefore not subject to the CPSA. However, the Commission has jurisdiction over drug manufacturers under the Poison Prevention Packaging Act (PPPA, 15 U.S.C. 1471, et seq.), an act which the Commission also administers. Section 30 of the CPSA transferred to the Commission the responsibility for administering and enforcing the PPPA, the Flammable Fabrics Act (15 U.S.C. 1191, et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261, et seq.), and the Refrigerator Safety Act of 1956 (15 U.S.C. 1211, et seq.).

The former employee's request raised the issue of whether a drug manufacturer subject to the PPPA was a manufacturer within the meaning of section 4(g)(2) of the CPSA. In May 1978 the Commission considered whether a drug manufacturer and any other manufacturer subject to regulation under one of the "transferred" acts is a "manufacturer subject to the Act" for the purpose of section 4(g)(2).

The legislative history of section 4(g)(2) stressed the congressional concern with preventing persons from using government employment as a means for subsequently gaining employment in the regulated industry. Nothing in the legislative history differentiates between manufacturer subject to the regulatory provisions of the CPSA and manufacturers subject to the regulatory provisions of the transferred acts. There is therefore no basis to distinguish between former employees seeking employment with one group of manufacturers or another.

The Commission decided that "subject to this Act," as used in section 4(g)(2), includes any manufacturers subject to Commission regulation under the acts transferred by section 30. The Commission believes that this interpretation is consistent with the legislative intent which was to prevent

the employment problem mentioned above.

The Commission's Employee Standards of Conduct regulation includes a provision which is based on section 4(g)(2) of the CPSA (16 CFR 1030.1201). The Commission is therefore amending this provision to reflect its statutory interpretation.

Since this amendment is a statutory interpretation, it is not necessary that the regulation be published for comment under 5 U.S.C. 553 or that there be a delayed effective date.

Accordingly, Title 16, Chapter II, Subchapter A, Part 1030, section 1030.1201(b)(1) of the Code of Federal Regulations is amended, as follows:

(1) The term "manufacturer subject to the Act" means any person who manufacturers or imports a consumer product, and shall include any person who manufactures or imports products that are subject to the jurisdiction of the Commission under the Flammable Fabrics Act, as amended (15 U.S.C. 1191, et seq.); the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261, et seq.); the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471, et seq.); and the Refrigerator Safety Act of 1956 (15 U.S.C. 1211, et seq.). The terms "manufacturing," "imports," and "consumer products" are defined in sections 3(a)(8), 3(a)(13) and 3(a)(1) of the Act, respectively.

Dated: December 26, 1978.

SADYE E. DUNN,
Consumer Product Safety Commission.

[FR Doc. 78-36377 Filed 12-28-78; 8:45 am]

[4110-07-M]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulation No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Subpart C—Basic Computation of Benefits and Lump Sums

NEW METHODS OF COMPUTING BENEFIT AMOUNTS

AGENCY: Social Security Administration, HEW.

ACTION: Interim Regulations.

SUMMARY: These rules state the new methods that will be used to compute the basic benefits, minimum benefits, and cost-of-living increases, and to recompute the basic benefit amount. These changes are required by the Social Security Amendments of 1977. The principal purpose of the new methods is to stabilize the relationship between benefits and the worker's earnings, for future beneficiaries. This purpose will be achieved principally by making cost-of-living increases apply only to persons eligible for benefits at the time of the increases and by adjusting, for computation purposes, a worker's past earnings to reflect changes in the wage levels of all wage earners. The effect of the new benefit computation methods is to reduce substantially the long-range social security deficit which resulted in large part from unintended effects of the automatic cost-of-living increase provisions of the 1972 Social Security Amendments and from the overemphasis on a worker's recent earnings when computing benefit amounts.

DATES: Your comments will be considered if we receive them before February 27, 1979. This regulation is intended to take effect on January 1, 1979.

ADDRESSES: Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertinent to the regulations which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Jack Schanberger, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The automatic cost-of-living benefit increase provision of the 1972 Social Security amendments has successfully made inflation-proof the benefits of persons on the social security benefit rolls. This protection is assured by increasing benefits as the Consumer Price Index (CPI) goes up. However, since 1972 the automatic benefit increase has also applied to benefits which will be payable to persons who are not yet eligible. As explained below, applying cost-of-living increases to future beneficiaries actually overcompensates them for inflation and results in a huge, unnecessary drain on the Social Security Trust Funds.

Benefits have traditionally been based on a worker's average earnings during that worker's working life, so that as the worker's earnings rise, the worker's potential future benefits also rise. Since the 1972 Amendments, benefits for future beneficiaries have also been increased whenever the CPI has risen, and price rises have exceeded the rates expected by Congress. Thus, as wages have increased to reflect price increases and as prices have increased to reflect wage increases, there has been an upward spiralling of benefit levels which has placed a much heavier burden on the Social Security Trust Funds than was intended by Congress.

If the pre-1977 Amendment method for computing benefits had been retained, benefit levels would have risen by about 50 percent more than wages over the next 75 years. As a result of this rise in benefit levels, many workers would have received retirement benefits which were equal to or even greater than their wage levels when they retired. This unintended result accounted for about one-half of the long-range deficit of the trust funds.

DECOUPLING

The method provided in the 1977 Amendments for stabilizing the relationship between benefit levels and earnings levels is known as "decoupling." Decoupling means that cost-of-living increases will continue to apply to keep benefits inflation-proof, but only after a person either becomes eligible for benefits, or dies before becoming eligible.

BENEFIT COMPUTATIONS BASED ON INDEXED EARNINGS

Along with decoupling, the future benefits of a worker not yet eligible will be protected against inflation by adjusting or "indexing" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings, which will be computed when the worker or the worker's survivors file for benefits, will be used to compute benefit amounts. Pre-amendment computation methods would have used the worker's actual earnings, without adjustment.

DEFINITION OF AVERAGE OF TOTAL WAGES

As provided by statute, wages are indexed by applying a ratio to the worker's earnings for each year beginning with 1951. The ratio is the "average wage" earned by all wage earners in

the second year before the year of the worker's eligibility for benefits or death, divided by the "average wage" earned by all wage earners in the year of past earnings being adjusted. Individuals who worked for wages in more than one job will be counted as only one wage earner. To compute the average wage in any given year, therefore, it is necessary to know the total wages earned in that year and the total number of individuals who earned those wages.

The Congress gave the Secretary express authority to decide how to compute the average wage for each year beginning with 1951 using wages reported to the Secretary of the Treasury or his delegate. The Department proposes to determine the average wage figure as described below.

1978 and Succeeding Years

As legislative history suggests, data on total wages and total wage earners will be obtained from W-2 Forms submitted to IRS for income tax purposes. For 1978 and 1979, only W-2 Forms that are attached to IRS Forms 1040 will be used. (Similar data for 1977 will also be obtained, so that average wages for 1951-1977 can be adjusted to the 1978 level.) Beginning with average wages for 1980, all W-2 Forms submitted to IRS for income tax purposes will be used. (Again, similar data for 1979 will be obtained in order to adjust average wages for 1951-1979 to the 1980 level.)

1973 Through 1977

For each year, total wages and total wage earners will be determined from all reports of taxable wages earned during the first quarter of the year, submitted to SSA for social security tax purposes. The average wage for the first quarter of the year will be multiplied by four to obtain the average wage for the year.

For years before 1977, total wages could be determined from IRS W-2 Forms, but not total wage earners. This is because IRS did not process joint returns for those years to indicate whether the husband, wife, or both earned the reported wages. Thus, the best source of data on total wages and total wage earners for these years is SSA's own records.

Total wages for these years are determined by using taxable wages earned during the first quarter of the year rather than wages earned during the entire year. The earnings in the first quarter are considered to be more appropriate, because many wage earners reach the ceiling for reported earnings before the end of the year while relatively few reach the ceiling in the first quarter. For this reason, the first quarter earnings have also been used by SSA for other purposes under the statute, such as the determination of the contribution and benefit base, which is the maximum annual amount of earnings taxable and creditable toward benefits under social security.

1957 Through 1972

Data on average taxable wages reported for all employees for the first quarter of each year before 1973 are not available on a 100-percent basis. However, beginning with 1957, such data are available from a statistical one-percent sample of social security workers containing information on wages earned during the first quarter of the year and submitted to SSA for social security purposes. As for years 1973 through 1977, the average wage for the first quarter will be multiplied by four to obtain the average wage for the year.

1951 Through 1956

For each year, average taxable wages will be determined from a statistical 0.1% sample containing data on wages earned during the first quarter of the year and submitted to SSA for social security tax purposes. Again, as for years 1957 through 1977, the average wage for the first quarter will be multiplied by four to obtain the average wage for the year.

In addition, appropriate adjustments will be made so that, despite the different sources of data, the results for all years will be comparable. The following are some examples of the differences in data for various periods:

(a) For years beginning with 1980, all W-2 Forms will be used, while only those W-2 Forms attached to IRS Form 1040's will be used for 1978 and 1979. The data from these two sources are expected to be different since, for example, persons with very low wages may not file a Form 1040.

(b) W-2 Forms submitted to IRS will be used for years after 1977, while wage reports to SSA will be used for earlier years. Wages for all types of employment are reported to IRS, but wages for some types of employment are not reported to SSA. All wages for the year are reported to IRS, but wages are reported to SSA only up to the maximum taxable amount.

(c) Sampling will be used for years before 1973.

Given that similar data on total wages and total wage earners are not available for all years, it is believed that the data and the adjustments that SSA plans to use will produce fair and reliable results.

Publication of Wage Levels

Each year, the Secretary of Health, Education, and Welfare will publish in the Federal Register the current information on general wage levels that is needed to compute a person's benefit. The first publication will include the average of the total wages for calendar years 1951 through 1977.

When Wage Indexing Is Effective

Wage indexing will become effective for workers who after 1978 first become eligible for retirement or disability benefits or die before becoming eligible. If the wage indexing method results in a lower retirement benefit than would be payable under pre-1977 Amendment methods, the former methods, slightly modified, may be used for persons who become eligible for a retirement benefit in years 1979 through 1983.

Minimum Benefit Frozen

The 1977 Amendments provide that the minimum benefit amount will be frozen at $122, which is the amount that is found in the first line of column IV of the benefit table that is in effect for December 1978, raised to the next higher dollar. That amount will then be subject to cost-of-living increases only for years in which a beneficiary is entitled to payments. Freezing the minimum benefit puts proper emphasis on the Supplemental Security Income program as a source of income for the needy. In order to provide for the needy, the minimum benefit has been increased more rapidly in the past than benefits generally. However, these increases have often resulted in somewhat of a windfall for persons who were not needy, but were receiving the minimum because they did not rely on earnings covered by social security as their primary means of support during their working lifetime.

Special Minimum Benefit Increased

The special minimum benefit, which applies to individuals who worked for many years under social security for very low wages, will guarantee these workers a benefit of at least $11.50, instead of $9.00, for each year of coverage over 10 and up to 30. The special minimum benefit will be recomputed in January 1979 for present beneficiaries to take into account this increase in the base figure from $9 to $11.50.

Cost-of-living increases will now apply to the special minimum benefit, as well.

Recomputations

Workers whose benefits were computed using wage indexing will be able to have their basic benefit recomputed if earnings after entitlement will result in a higher benefit, although the additional earnings will not be indexed.

Issuance of Regulations

The provisions for computing benefits under the Social Security Amend-

ments of 1977 are effective January 1, 1979. Therefore, we are publishing these regulations with interim effect, because a delay in implementation would be impractical.

These rules are required by the statute. In the one area where regulations are specified—the definition of the average for the total wages for all workers for each year—our issuance of regulations at this time has enabled us to determine the best available data and the most feasible administative methods. We are issuing a separate notice giving the average of the total wages for calendar years 1951 through 1977 based on these data and methods. These figures will be used in wage indexing for workers who after 1978 first become eligible for retirement or disability benefits or die before becoming eligible. While the rules will have interim effect, we shall consider public comments before issuing final rules.

(Sections 205, 215, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended, 64 Stat. 506, as amended, 49 Stat. 647; 42 U.S.C. 405, 415, and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance.)

Dated: December 14, 1978.

STANFORD G. ROSS,
Commissioner of Social Security.

Approved: December 16, 1978.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.203 is amended as follows: In paragraph (a), "or average indexed monthly earnings," is added after "average monthly wage"; in paragraphs (d) and (f), the period is deleted after "average monthly wage" and "or average indexed monthly earnings." is added; and paragraphs (m), (n), and (o) are added to read as follows:

§ 404.203 Definition of terms.

* * * * *

(m) *The average of the total wages.* As used in this subpart, "the average of the total wages" (the average wage) means:

(1) for years after 1977, all remuneration reported as wages on Form W-2 to the Internal Revenue Service for all employees for income tax purposes, divided by the number of wage earners. The term includes remuneration for services not covered by social security and remuneration for covered employment in excess of that which is subject to FICA contributions.

(2) for the years 1951 through 1977, four times the amount of average taxable wages that were reported to the Social Security Administration for the first calendar quarter of each year for social security tax purposes. For years prior to 1973, these average wages will be determined from a sampling of these reports. The average wage amounts for 1951–1977 will then be adjusted to make the amounts comparable to those computed by using W-2 data reported to IRS for income tax purposes.

(n) *Average indexed monthly earnings (AIME).* The "average indexed monthly earnings" (AIME) are the average of the insured individual's monthly creditable earnings in the benefit computation years, as adjusted or "indexed." The adjustment is intended to reflect increases in the average wages of all wage earners from 1951 through the second year before the year the worker dies or becomes eligible for benefits.

(o) *Eligibility.* For purposes of this subpart, an individual is considered to be eligible:

(1) for old-age insurance benefits, beginning with the month in which the individual attains age 62; and

(2) for disability insurance benefits, beginning with the month in which the individual's period of disability begins (see § 404.311)

If fewer than 12 months have passed from the end of an earlier period of entitlement to disability benefits to the beginning of the current period of eligibility to retirement or disability benefits or death, then current eligibility is considered to begin the same month the earlier period of disability began.

§ 404.205 [Amended]

2. Section 404.205 is amended by deleting "and the Amendments of 1972 (Pub. L. 92-603)." and inserting "the Amendments of 1972 (Pub. L. 92-603); and the amendments of 1977 (Pub. L. 95-216)." in the first sentence; and by inserting after "Act," in the third sentence "from the individual's average indexed monthly earnings (§ 404.212), from the individual's primary insurance benefit if the individual had earnings in years before 1951 (§ 404.213),".

§ 404.207 [Amended]

3. Section 404.207 is amended by inserting after "higher" in the first sentence of paragraph (a) "or unless the wage indexing method in the Amendments of 1977 applies,".

4. Following § 404.211, new §§ 404.212, 404.212a, 404.212b, and 404.212c are added to read as follows:

§ 404.212 Computing an individual's primary insurance amount (PIA) under the 1977 Amendments.

(a) *PIA based on the average indexed monthly earnings (AIME).* The PIA is the sum of three separate percentages of portions of the AIME. (See § 404.212a for an explanation of the AIME.)

(1) For individuals who either become eligible for benefits in 1979 or die in 1979 before becoming eligible, the PIA is computed by adding the following:

(i) 90 percent of the first $180 of the AIME;

(ii) 32 percent of the AIME over $180 and through $1,085;

(iii) 15 percent of the AIME over $1,085.

(2) If the sum is not a multiple of $.10, it is rounded to the next higher multiple of $.10.

(3) For eligibility or death before eligibility after 1979, the same formula is used except that $180 and $1,085 are adjusted as explained in paragraph (b) of this section.

(4) If, after adjustment for the cost-of-living increase, the PIA computed under the 1977 Amendments is less than $122 (as adjusted for the cost of living), which is the minimum amount in column IV of the benefit table that was in effect in December 1978, rounded to the next higher dollar, or is less than the special minimum PIA computed for the individual (as adjusted for the cost of living), then the PIA to be used in determining that individual's benefits is the larger of these two minimum amounts.

(b) *Adjusting $180 and $1,085 in the PIA formula after 1979.* For an individual who after 1979 either first becomes eligible for benefits (§ 404.203(o)) or dies before becoming eligible, the $180 and the $1,085 are adjusted. The adjustment updates the amounts to reflect the change in average wages of all wage earners which has occurred between 1977 and the second year before the year of first eligibility or death. This is done first by dividing the average of the total wages for the second year before the year in which the insured individual dies or first becomes eligible for benefits, by the average of the total wages for 1977 (the second year before 1979). The answer is multiplied by $180 and by $1,085 to obtain the revised figures for purposes of computing the PIA. The revised figures are rounded to the nearer dollar. For example, the amount of $210.49 is rounded to $210.00; and $210.50 is rounded to $211.00.

Example. An insured worker becomes eligible for benefits in 1981. The estimated average of the total wages for 1979, the second year before the worker became eligible, is $11,311.72

and the average of the total wages for 1977 is $9,779.44. Thus, $180 and $1,085 are adjusted as follows:

$11,311.72/$9,779.44×$180=$208.

$11,311.72/
$9,779.44×$1,085=$1,255.

(c) *Prior entitlement to disability insurance benefits (DIB).* The PIA is computed or recomputed as indicated in paragraph (a) of this section for any individual who after 1978 becomes age 62, becomes disabled, or dies before becoming age 62 or disabled, except where the individual was previously entitled to DIB.

(1) *Prior entitlement to DIB before 1979.* The PIA will be computed or recomputed under the pre-1977 Amendments average monthly wage method if the individual was entitled to DIB before 1979 and fewer than 12 months have passed between the prior entitlement to DIB and current eligibility for retirement (RIB) or disability insurance benefits or death. Also, if fewer than 12 months have passed between the prior entitlement to DIB and either current entitlement to RIB or DIB, or death, then the individual's PIA will be the amount computed under paragraph (c)(2) of this section.

(2) *Prior entitlement within past 12 months.* If the individual has been entitled to DIB either before or after 1979 but within 12 months of the first month of current entitlement to retirement or disability benefits or death, the current PIA is the largest of the following:

(i) the PIA (including one computed under a pre-1977 Amendments provision) which was used in figuring the individual's previous DIB, increased by:

(*a*) any general benefit increase which has occurrred since the individual was last entitled; and

(*b*) any cost-of-living increase (see § 404.221) which has occurred since the individual was last entitled;

(ii) $122, which is the minimum amount in column IV of the benefit table that is in effect in December 1978, rounded to the next higher dollar, plus any cost-of-living increases which have occurred since the individual was last entitled to disability benefits;

(iii) the special minimum PIA (see § 404.219); or

(iv) a recomputation of the former PIA to take into account earnings after the DIB entitlement ended.

(3) *Prior entitlement to DIB more than 12 months ago.* If the individual's entitlement to DIB ended more than 12 months before the first month of his current entitlement to benefits or death, a new PIA will be computed. The individual's new PIA will be the higher of this newly computed PIA or the PIA that was in effect for the last month of the individual's former entitlement to disability insurance benefits without regard to any interim cost-of-living increases.

§ 404.212a Computing an individual's average indexed monthly earnings (AIME).

(a) *General.* Earnings up to the annual wage limitation (§ 404.1027) which are recorded in the Social Security Administration's records for an individual will be the basis for computing the AIME. The amounts recorded for each year after 1950 and through the second year before the earlier of the year of first eligibility or death will be adjusted or "indexed" to reflect increases in average wages for all wage earners between the year in which the amounts were earned and the second year before the year of the individual's eligibility for benefits or death.

(b) *Computing the AIME.* (1) To compute the AIME:

(i) Divide the average of the total wages for the second year (1977 or later) before the earlier of the year of the insured individual's death or first eligibility to benefits, by the average of the total wages for the first computation base year. Multiply the answer by the wages and self-employment income credited to the individual (up to the annual wage limitation) for this first computation base year to obtain the adjusted earnings for that year;

(ii) Repeat this process for each computation base year which is subject to adjustment (see paragraph (b)(2) of this section) to determine the adjusted earnings for each such year;

(iii) Select the highest earnings (adjusted and those which, could not be adjusted) for the number of years equal in number to the benefit computation years;

(iv) Total these highest earnings and divide by the total number of months in the benefit computation years. The answer is the average indexed monthly earnings;

(v) If the AIME as computed is not a multiple of $1, reduce it to the next lower multiple of $1.

(2) Earnings recorded beginning with the year before death or first eligibility and for each year thereafter may be used in computing the AIME, but the individual's earnings for these years are not adjusted.

Example. An individual retires at age 62 in 1979. He earned $3,000 in 1956. The average annual wages were $3,532.36 for 1956 and $9,779.44 for 1977. The individual's indexed earnings for 1956 are computed as follows:

$$\text{Indexed Earnings} = \text{Individual's earnings for year to be indexed} \times \frac{\text{Average wage for second year before eligibility or death}}{\text{Average wage for year being adjusted}}$$

$$\text{Indexed Earnings} = \$3{,}000 \times \frac{\$\ 9{,}779.44}{\$3{,}532.36} = \$8{,}305.59$$

(c) *Determining the computation base years.* For purposes of the AIME, computation base years are determined the same as for the average monthly wage. (See § 404.211(b).)

(d) *Determining the elapsed years.* Elapsed years are determined the same as for the average monthly wage (see § 404.211(c)).

§ 404.212b Selecting the proper computation method.

(a) *When an individual's benefits are computed under the 1977 Amendments.* (1) Benefits are computed under the provisions of the Social Security Amendments of 1977 for an individual who after 1978: (i) attains age 62, (ii) becomes disabled, or (iii) dies before age 62. (2) If, however, the individual had been entitled to a disability benefit for any of the 12 months preceding his current eligibility or death, the year in which his former disability eligibility began determines the method of computing the current PIA (see § 404.212(c)(1)).

(b) *When modified pre-1977 Amendments computations are to be used*

after 1978 for computing a Retirement Insurance Benefit (RIB) or a survivor's benefit. (1) RIB and dependents' benefits are based on an average monthly wage and a PIA as computed under the pre-1977 amendment provisions if certain conditions are met. (See subparagraph (2) of this paragraph.) In computing the PIA, the benefit table in effect for December 1978 is used without regard to any later benefit increases which might have affected the table, and without using the individual's earnings in the year of eligibility or death or any later years. If a deceased worker met the conditions of this provision, benefits for the survivors are based on the PIA as computed under the pre-amendment average monthly wage provisions, even if the worker had not applied for an RIB.

(2) The conditions for using the pre-1977 Amendments computations are:

(i) The individual had wages or self-employment income credited before 1979;

(ii) The individual did not attain age 62, become disabled, or die before 1979;

(iii) The individual becomes age 62 before 1984; and

(iv) The PIA computed under the pre-1977 amendment average monthly wage provision is higher than the PIA computed under the 1977 Amendments, including the special minimum benefit and pre-1951 earnings provisions, after adding any applicable cost-of-living increases to the computations.

§ 404.212c Publication of formula for computing AIME and PIA.

Before November 2 of each year, the Secretary of Health, Education, and Welfare will publish in the FEDERAL REGISTER the formula for computing benefits for the next year, the formula for adjusting wages and self-employment income when computing the AIME, and the average of the total wages needed for these computations. The first publication includes the average of the total wages for each calendar year after 1950 through 1977.

5. In section 404.219 paragraphs (a) and (b)(2) are amended and paragraph (d) is added to read as follows:

§ 404.219 Special minimum primary insurance amounts.

(a) *General.* The 1972 amendments provided for a special computation of primary insurance amounts as an alternative to the method described in § 404.209 and § 404.213. Under that provision, for monthly benefits payable after December 1972 and for lump-sum payments for deaths occurring after that month, an insured individual's primary insurance amount is equal to $8.50 multiplied by the number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The 1973 amendments modified this provision so that for monthly benefits payable after February 1974 and for lump-sum payments for deaths occurring after that month, an insured individual's primary insurance amount is equal to $9.00 multiplied by the number of the individual's "years of coverage" (see paragraph (b) of this section) in excess of 10 but not more than 30. The maximum primary insurance amount under this special minimum computation is $180 for months after February 1974 ($170 for January 1973 through February 1974). These amendments did not provide any additional increase or change in this provision for months after February 1974. The 1977 amendments further modified this provision so that beginning January 1979, the PIA's are computed or recomputed by multiplying $11.50 times the number of the individual's years of coverage in excess of 10 but not more than 30, and the special minimum PIA is now subject to cost-of-living increases which are applicable to both current and future beneficiaries. The special minimum PIA provision applies only when it produces a PIA which is greater than the PIA determined under the average monthly wage method (§ 404.209), the indexing method (§ 404.212), and the pre-1951 earnings method (§ 404.213), whichever applies.

(b) *Years of coverage.* In computing an insured individual's primary insurance amount under the special minimum provision described in paragraph (a) of this section, the number of the individual's "years of coverage" is equal in number to the sum of the following, up to a maximum of 30. * * *

(2) The number of "computation base years" after 1950 (see § 404.211(b)) in which the individual's creditable earnings for the year were not less than 25 percent of the maximum creditable amount for that year (see § 404.1027 and § 404.1068) as determined under the provisions of section 230 of the Act as in effect before the 1977 Amendments.

* * * * *

(d) *Recomputing the special minimum primary insurance amount.* Under the 1977 Amendments the Secretary recomputes the special minimum PIA's for all current beneficiaries by using $11.50 as the base figure by which the number of years of coverage is multiplied. The recomputed amount is effective January 1979 and is then subject to cost-of-living increases.

6. Section 404.221 is amended by changing the cross-reference in the second sentence of paragraph (a) from "(see § 404.231)" to "before January 1979 (see § 404.219)"; and by adding paragraphs (c), (d), and (e) to read as follows:

§ 404.221 Cost-of-living benefit increases.

* * * * *

(c) *Determining cost-of-living increases after 1978.* (1) Beginning in 1979, cost-of-living increases are also applicable; (i) to the special minimum benefit (see § 404.219), (ii) to all primary insurance amounts initially computed under the 1977 Amendments (including a PIA computed under a pre-1977 Amendments computation under § 404.212b(b)) beginning with the year in which the individual becomes eligible for benefits or dies, and (iii) to the maximum family benefit. (2) The $122 minimum benefit, which is the smallest amount in column IV in the table of benefits for December 1978 rounded to the next higher dollar, is increased, but subject to the following provisions:

(i) If an individual is entitled to an old-age benefit, the minimum PIA is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65.

(ii) If an individual is entitled to a widow's or a widower's benefit, the minimum primary insurance amount on which that benefit is based is increased beginning with the earlier of the year in which the individual's earnings are such that benefits are first payable after any deductions because of work (§ 404.415), or the year in which the individual attains age 65. However, cost-of-living increases will apply for any year before these events if one or more individuals are entitled to a child's, mother's, or parent's benefit for any month in that year.

(iii) A cost-of-living increase is not applied to a minimum PIA for any year in which no one is entitled to a benefit on the worker's earnings record for any month of that year.

(iv) If no cost-of-living increase applies to the minimum PIA in any year because of the provisions of this section, the next cost-of-living increase after that year that can apply will apply to the PIA as it may have been previously increased for the cost of living.

(v) Despite the restrictions in clauses (i) through (iv) of this paragraph, no PIA can be less than the one that would be computed, after adjustment for the cost of living, under the indexing method (§ 404.212), the special minimum benefit (§ 404.219), or the pre-1951 earnings method (§ 404.213), whichever is highest.

(d) *Effective date of increase.* The cost-of-living increase goes into effect

in June of the year in which the cost-of-living computation quarter occurs, regardless of when during that year the individual becomes entitled or reentitled to benefits.

(e) *Publishing cost-of-living increases after 1978.* When the Secretary determines that a cost-of-living increase is due, he publishes the following information in the FEDERAL REGISTER within 45 days after the close of the latest cost-of-living computation quarter:

(1) The fact that an increase is due;

(2) The percentage of the increase;

(3) A revised range of the special minimum primary insurance amounts possible after the latest cost-of-living increase;

(4) A revised range of the maximum family benefits possible after the latest cost-of-living increase; and

(5) A revised table which will be deemed to appear in section 215(a) of the Act (see § 404.223) for the purpose of computing benefits under the pre-1977 Amendments provisions.

7. Section 404.244 is amended by adding paragraph (b)(3) to read as follows:

§ 404.244 "Automatic" recomputation.

* * * * *

(b) *Method of recomputation.* * * *

(3) The 1977 Social Security Amendments provide that the new indexing computation method described in § 404.212 must be used to recompute the PIA for an individual who has wages or self-employment income after 1978 if the PIA was originally computed or could have been computed under the new method. The actual dollar amounts (not to be adjusted) in the Social Security Administration's records for the year of entitlement and each later year will annually be compared with the earnings in the base years that were used in the last computation. Higher earnings in any year that were not used in the last computation will be substituted for one or more years of lower earnings that were used, and the PIA will be recomputed. The $180 and the $1,085 as adjusted in the initial computation (see § 404.212(b)) are used, without any further adjustment, each time the PIA is recomputed. The recomputation must increase the PIA by at least $1 and is effective beginning with the month of death, or, for a living individual, January following the last year of higher earnings used in the recomputation. (See § 404.219 for recomputing the special minimum benefit.)

* * * * *

[FR Doc. 78-36344 Filed 12-28-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Febantel Paste

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Bayvet Division of Cutter Laboratories, Inc., to delete the restriction on the use of febantel paste in treating pregnant mares. The paste is used as an anthelmintic paste in treating horses for intestinal worms.

EFFECTIVE DATE: December 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bayvet Division of Cutter Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 107-345V to delete the present restriction against use of febantel paste in pregnant mares. The product is presently regulated for use orally or in the feed of horses, foals, and ponies (except pregnant mares) for the removal of large strongyles, sexually mature and immature ascarids, pinworms, and the various small strongyles.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.903 *Febantel paste* by deleting paragraph (d)(3)(ii) and marking it reserved.

Effective date. This regulation shall be effective December 29, 1979.

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

Dated: December 19, 1978.

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

[FR Doc. 78-35909 Filed 12-28-78; 8:45 am]

[4110-03-M]

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Lenperone Tablets and Lenperone Hydrochloride Injection; Revocation of Certain Regulations.

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document revokes certain animal drug regulations to reflect withdrawal of approval of two new animal drug applications (NADA's) providing for use of lenperone hydrochloride injection and tablets. This action was requested by A. H. Robins Co., the sponsor.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093

SUPPLEMENTARY INFORMATION: In a separate document published elsewhere in this issue of the FEDERAL REGISTER, the agency is withdrawing approval of NADA's 96-508 and 97-901 for lenperone hydrochloride injection and tablets, respectively. The applications are held by A. H. Robins Co., Research Laboratories, 1211 Sherwood Ave., Richmond, VA 23220. Accordingly, the regulations in Parts 520 and

522, reflecting approval of these applications, are revoked.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 520 and 522 are amended as follows:

§ 520.1235 [Revoked]

1. In Part 520, by revoking § 520.1235 *Lenperone tablets.*

§ 522.1235 [Revoked]

2. In Part 522, by revoking § 522.1235 *Lenperone hydrochloride injection.*

Effective date. This regulation is effective December 29, 1978.

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

Dated: December 19, 1978.

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

[FR Doc. 78-35908 Filed 12-28-78; 8:45 am]

[4110-03-M]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Butamisole Hydrochloride

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the animal drug regulations to reflect the redesignation of the section number assigned to butamisole hydrochloride. An incorrect section number was inadvertently assigned when the section was added to the regulations in an earlier amendment.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of April 14, 1978 (43 FR 15625), the Food and Drug Administration (FDA) amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co., providing for the use of butamisole hydrochloride for treatment of whipworms and hookworms in dogs. The new provisions were inadvertently assigned to § 522.264 (21 CFR 522.264). The provisions should have been assigned to § 522.234 (21 CFR 522.234); the agency is now redesignating the section to reflect the proper placement of butamisole hydrochloride.

§ 522.234 [Redesignated]; § 522.264 [Redesignated].

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 522 is amended by redesignating § 522.264 *Butamisole hydrochloride* as § 522.234 *Butamisole hydrochloride.*

Effective date. This amendment is effective December 29, 1978.

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

Dated: December 15, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-35906 Filed 12-28-78; 8:45 am]

[4110-03-M]

[Docket No. 77N-0404]

PART 101—FOOD LABELING

Protein Supplements, Warning Labeling

AGENCY: Food and Drug Administration.

ACTION: Tentative Final Rule.

SUMMARY: This tentative final rule will establish label warning requirements for products prepared in whole or in part from protein, protein hydrolysates, amino acid mixtures or combinations of these that may be used to reduce weight. The agency is establishing these requirements on the basis of evidence that very low calorie diets consisting primarily of protein may cause serious medical problems, or death. The warning requirements are to ensure that consumers are alerted to the potential health hazards associated with consumption of protein supplements and products prepared in whole or in part from protein, protein hydrolysates, amino acid mixtures, or a combination of these for extended periods of time as the sole or primary source of calories in order to lose weight.

DATES: Written comments by February 27, 1979; the proposed effective date of a final rule based on this tentative final rule is 60 days after publication of the final rule in the FEDERAL REGISTER.

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

FOR FURTHER INFORMATION CONTACT:

Victor P. Frattali, Bureau of Foods (HFF-200), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

In the FEDERAL REGISTER of December 2, 1977 (42 FR 61285), the Commissioner of Food and Drugs proposed to require warnings on the label of protein supplements that may be used for weight reduction or weight maintenance. The proposal was issued after the agency received numerous reports of illness and death among persons using these protein products for weight reduction or maintenance. Additional reports of illness and death have been received in response to the proposal.

In addition to the proposal, the agency has distributed to health professionals a special issue of the *FDA Drug Bulletin* (January-February 1978, Vol. 8, No. 1) requesting information on illness or death associated with the use of the so-called "predigested liquid protein" products, other protein supplements or adherence to a very low calorie diet.

On December 6, 1977, the Assistant Secretary for Health of the Department of Health, Education, and Welfare established the U.S. Public Health Service (USPHS) Protein Diet Task Force consisting of representatives from the Food and Drug Administration (FDA), the Center for Disease Control (CDC), the National Institutes of Health (NIH), and the National Center for Health Statistics (NCHS), to explore the public health problem of deaths and injuries associated with the use of protein products as the sole or primary source of calories to achieve weight reduction. The USPHS Task Force has engaged in a number of activities designed to increase our knowledge of, and understanding about, the medical consequences of adherence to these protein diets. These activities and the results obtained thus far are described below.

In addition to the activities of the USPHS Task Force, FDA has been working closely with the Federal Trade Commission (FTC) on this matter. In particular, the FTC has been assessing the advertising for these protein products.

II. Summary of Data and Information-Gathering Activities

To date, 60 deaths associated with the use of protein or related products as the principal or sole source of calories for rapid weight loss have been brought to the attention of FDA. These cases, which involve women and men, and blacks and whites, continue to be investigated by FDA and CDC.

Most of the persons who died were consuming solutions of partially hydrolyzed protein of low biological quality derived from gelatin, the so-called "predigested liquid protein" products. In evaluating these deaths, FDA and CDC have used strict criteria to determine whether the deaths can unequivocally be attributed to the use of a protein product in the manner described above. The primary criterion used is that the decedent's death was a cardiac one without evidence of any previous disease other than obesity.

To date, 16 of the 60 cases have been found to meet this criterion. All of the 16 decedents were white women between 23 and 51 years of age who were on some type of low calorie protein diet for a prolonged period of time (2 to 8 months) and who had achieved major weight loss (20 to 139 pounds). Eleven of these 16 decedents were women between the ages of 25 and 44. These 11 deaths are being used to estimate the death rate among persons in the United States in this age range who adhered to a very low calorie protein diet.

The following activities are underway to increase the body of information, and hence our understanding of these deaths:

1. Beginning in late December 1977, FDA and CDC jointly developed a telephone interview probability survey to determine the extent of use of protein products as the principal or sole source of nourishment for purposes of rapid weight reduction among 25- to 44-year-old females. The survey was conducted under contract and obtained information on the type(s) of product(s) used, the manner and duration of use, and other related facts from females in the age range of interest who were on a diet to lose weight in 1977. Out of 19,260 households screened, a total of 6,616 eligible respondents were interviewed between March 9 and April 15, 1978 regarding their use of protein products from January 1977 to the date of the interview. The completion rate for the survey was 87.3%.

Use rates were determined for the different forms of protein commonly found on the market. Based on the use rates for "predigested liquid protein" products, statistical projections were made of the numbers of liquid protein users in the U.S. among 25- to 44-year-old females during 1977. These projections were developed for the liquid form of protein products in order to establish a death rate by combining such information with data on deaths among liquid protein dieters from the same population group. Out of a total of 60 cases, FDA and CDC have compiled information on 11 deaths among obese women who had been using liquid protein products for 2 months or longer and who were free of a serious underlying illness. All 11 were white women between 25 and 44 years of age who died between the beginning of July and the end of December in 1977.

The statistical projections of the liquid protein survey data produced an upper estimate (.95 confidence limit) of 98,000 white females in the U.S. who used a liquid protein product as the principal or sole source of nourishment for 1 month or longer during 1977. Among this group of users, a smaller group, estimated to be 37,000 (.95 confidence limit), used liquid protein for 2 months or longer. The projected number of users for 2 months or longer was subsequently taken as the appropriate denominator for purposes of calculating the death rate. Relating the 11 deaths over a 6-month period, or a projection of 22 deaths per year, to the estimated 37,000 users produces an estimated adjusted annual death rate of 59 per 100,000 associated with the particular syndrome observed among strict dieters.

The telephone survey also identified a number of users of the various forms of protein products among black females in the 25- to 44-age range and among females in other racial groups. The survey also gathered additional information about the manner in which respondents learned about, and decided to use, protein products, how they perceived product effectiveness as an aid to weight loss, and how they conceived intentions about future use of the products. The full report of the telephone survey has been placed on file with the FDA Hearing Clerk (RPT 300 and RPT 301).

2. From national statistics compiled by NCHS, the annual death rate over the past few years among premenopausal white females attributable to acute myocarditis, intractable cardiac arrhythmias, and related cardiac abnormalities has been slightly less than 2 per 100,000. In order to derive a better estimate of the rate for obese females from this population subgroup whose deaths are not associated with antecedent serious illness, the USPHS Task Force recommended, and CDC and NCHS are currently conducting, a study on information from death certificates for 1975–1977. In appropriate cases, CDC will contact the physicians who signed the certificates and examine past medical records. The normative death rate for obese, but otherwise healthy, females is required for a more precise estimate of the increase in mortality among dieters whose deaths are associated with use of a protein product.

3. To explore the basic mechanisms for the cause of death, FDA initiated experimental protocols using the laboratory rat as a model. These tests are intended to examine the pathophysiology under severe conditions of calorie restriction on diets formulated primarily from commercial protein supplements. The studies were designed to assess the correlations of myocardial arrhythmias and death with various aberrant states of nutrition health and rate of weight loss. These studies are a prelude to a more definitive analysis of the problems associated with very low calorie protein diets. As discrete parts of the study are completed, the results will be subject to peer review in the normal course of events for publication in the scientific literature.

4. FDA has made inspections of manufacturers, repackers, and reformulators of "predigested liquid protein" and other types of protein products promoted for weight control. Neither information obtained regarding manufacturing methods nor analyses of products obtained during establishment inspections have yet provided insight into the cause of death.

5. More than 165 reports of adverse reactions and effects attributed to consumption of protein products by consumers attempting to lose weight have been reported to FDA. Practically all of these reports resulted from consumer complaints directed to FDA district and regional offices located throughout the country. In addition, approximately 60 drug experience reports have been received on the use of protein products for weight reduction purposes. These reports were submitted in response to a request for such reports directed to the medical profession through an article on the subject and a report form included in the January–February 1978 issue of the *FDA Drug Bulletin*. A synopsis of most of these reports from consumers and health professionals is on file with the FDA Hearing Clerk (RPT 273 and RPT 274).

The complaints and adverse reactions reported were very diverse. Complaints included nausea, vomiting, diarrhea, constipation, tachycardia (rapid heart rate or palpitations), breathlessness, tinnitus (ringing in the ears), pain in the chest or abdomen, muscle cramps, headache, weakness, nervousness, amenorrhea (cessation of menstruation), decreased sex drive, skin rash, hair loss, blurring of vision, and impairment of mental concentration abilities. Adverse reactions includ-

ed electrolyte imbalances, dehydration, cardiac arrhythmias (irregularities of heart beat), myocardial infarction ("heart attack"), hypertension (high blood pressure), hemorrhage, protein-calorie malnutrition, anaphylaxis (severe allergic reaction), convulsions, unconsciousness, renal calculi (kidney stones), renal failure, gout, and hepatitis.

Review of these reports by FDA revealed no consistent pattern of complaints or reactions. Nausea, vomiting, diarrhea and headache were among the most frequently recorded complaints. The details provided in these reports were insufficient to indicate a cause-and-effect relationship between specific products or the products generally and the reported complaints and reactions. Hence, a cause-and-effect relationship can neither be affirmed nor rejected on the basis of the existing information from these reports.

There were sufficient details among the reported adverse reactions, however, to warrant concern. The most noteworthy were reports of electrolyte imbalance, i.e., hypokalemia (low blood potassium levels), and hyperkalemia (high blood potassium levels), which can lead to irregularities of heart rhythm and function. The question of reduced resistance to infection arose because of both reported symptoms commonly associated with infections and the observation of evidence of myocarditis in some individuals who succumbed (described in the issues of the *Morbidity and Mortality Weekly Report* for November 18, and December 30, 1977, Vol. 26, Nos. 46 and 52, respectively; and July 7, 1978, Vol. 27, No. 27). The possibility of allergic reaction emerged on the basis of such reports as gastrointestinal disorders, tachycardia, and skin rashes. Several reports also raised the possibility of adverse interactions with drugs. The frequency of reports of complaints and adverse reactions is sufficient to suggest that, in addition to precipitous cardiac arrhythmias and death, use of protein products for weight reduction purposes may be associated with a wide variety of symptoms and adverse signs in some individuals. Nevertheless, the primary adverse effect associated with the use of very low calorie protein diets for weight reduction purposes is the sudden onset of heart irregularities and death in previously well individuals.

6. Finally, the Nutrition Coordinating Committee of NIH has concluded that research on very low calorie diets is appropriate for inclusion within the framework of their total obesity research program. In addition, the USPHS Task Force suggested that medical and scientific opinion be obtained from a select group of experts on the immediate and long-term research needs and priorities on the public health problem at issue.

The USPHS Task Force has continuously monitored the death and injury information and related activities, and has concluded that the total body of existing knowledge on the subject continues to support the hypothesis that a cause-and-effect relationship exists between cardiac deaths and prolonged use of protein products as the principal or sole source of nourishment for purposes of rapid weight reduction, i.e., when the daily caloric intake is signifcantly below 800 Calories (i.e., below 800 kilocalories). This hypothesis rests primarily on the fact that cardiac deaths in the absence of clear cause are rare in premenopausal women, and that the number of deaths observed among women on very low calorie protein diets appears to far exceed the expected number.

To make a quantitative assessment of the difference in death rates, several bodies of information are required.

National mortality data indicate that the death rate due to a number of cardiac abnormalities among premenopausal women is less than 2 per 100,000 population per year. As mentioned previously, an effort is underway to further refine this information to arrive at the death rate due to cardiac abnormalities unassociated with antecedent disease among obese premenopausal women.

The occurrence of such deaths is so rare that no extensive epidemiological data analyses are known to exist. In any event, current estimates indicate that the normative death rate among obese, but otherwise healthy, females is unlikely to be significantly different from that for the general female population. Combining information on reported deaths among premenopausal female dieters with the telephone survey data on protein diet use rates yields an estimated annual death rate for dieters of 59 per 100,000. Comparing the expected mortality rate of less than 2 per 100,000 for all white females in the age range of interest with the estimated rate for dieters supports the initial indication that the observed death rate due to cardiac abnormalities among females on low calorie protein diets is much greater than the death rate for similar cause among nondieters. These developments continue to support the need for warning labeling on protein products.

Apart from the pursuit of epidemiological evidence regarding deaths, unequivocal establishment of cause-and-effect depends on a thorough understanding of basic mechanisms; such thorough understanding of the basic mechanisms in this particular instance does not exist. Several research activities are underway to provide additional understanding of the basic mechanisms involved, but there are some limitations on additional research. Because of the decline in use of this extreme approach to weight reduction and because ethical constraints prevent any deliberate trials in humans, it may ultimately prove impossible to establish a cause-and-effect relationship unequivocally in humans.

That it is potentially impossible to establish the cause-and-effect relationship unequivocally (i.e., that a thorough understanding of the basic mechanism at work may not be obtained) should not divert attention from the rather clear evidence described above that reliance on very low calorie protein diets to lose weight is dangerous.

The standards used by public health officials, physicians, and others to conclude, to a scientific certainty, that a cause-and-effect relationship exists are appropriately rigorous. Those same standards do not apply, however, when the question is whether an agency such as FDA, charged with the responsibility of protecting the public health—a responsibility that includes ensuring that consumers are fully apprised of risks inherent in various products—should adopt a rule that requires that warnings about the products be provided on their labels. This is not to say that an agency is free to act in the absence of competent scientific evidence. Rather, it is appropriate and responsible for an agency to mandate that consumers be provided with information or warnings about the use of products when, as is the case here, the evidence strongly suggests a definite relationship between the use of a product and death.

Imposition of a warning on the labeling of these protein products—even with the gaps in our understanding of the basic mechanism—is particularly appropriate because the consequences of indiscriminate use of these protein products is death. It is the Commissioner's belief that the label warning requirements that will be imposed when this tentative final order takes effect will maintain an adequate level of awareness of the possible health risks of a very low calorie protein diet. It is hoped that this heightened awareness will convince interested consumers of the need for extreme care in undertaking a very low calorie diet as well as the need to obtain the advice of a physician skilled in obesity therapy before doing so.

Further, it is hoped that this latter action will generate a candid dialogue between the doctor and the patient concerning the risks of this diet therapy as well as the benefits provided by weight reduction.

III. Availability of Information

FDA has obtained an extensive body of information about protein products and the risk to public health that they present when used in very low calorie diet regimens. This information includes reports about, and analyses of, the 60 deaths, adverse reaction and complaint/injury reports, articles from the medical and scientific literature, a report on the telephone survey described above, minutes of the USPHS Task Force meetings and related documents, copies of the comments filed on the proposals, and other material. All of these materials have been placed on display with the FDA Hearing Clerk and have been made available to the public upon request.

The Commissioner encourages persons who intend to comment on this tentative final rule and who wish first to examine the materials that are on file with the FDA Hearing Clerk, to seek copies expeditiously. FDA will expedite the processing of requests under the Freedom of Information Act for these materials. Clearly stated requests for specific records will facilitate prompt disposition of FOI requests. Persons are encouraged to review, to the extent possible, the materials in the FDA Hearing Clerk's office and to request copies of those documents based on their need for them in connection with the filing of comments, and not on a desire to possess a copy of each document that is on file. Although each document is in fact available to the public, the materials are quite voluminous; unlimited requests for copies of all of the documents will, understandably, take more time to process, and thereby delay the date on which the records will be made available.

The Commissioner will be most reluctant to extend the comment period on this tentative final rule. The cooperation of interested persons in filing timely and appropriately restrained FOI requests will enable them to comment intelligently on this tentative final rule without unnecessarily delaying the issuance date of a final rule.

IV. Summary of Differences Between the Proposal and the Tentative Final Rule

The provisions of this tentative final rule differ in several respects from those proposed on December 2, 1977. The following differences are the most significant ones:

1. In the proposal the warning requirement in § 101.17(d)(1) applied to "products composed essentially of protein or protein hydrolysates." In the tentative final rule, the warning requirement applies to "food products that derive over 50 percent of their total caloric value from protein, protein hydrolysates, amino acid mixtures or combinations of these."

2. In § 101.17(d)(1), the warning about use of these protein products by persons taking medication has been reworded. The pertinent sentence now states: "Use with particular care if you are taking medication."

3. In § 101.17(d)(2), the tentative final rule establishes different labeling requirements for protein supplements that are promoted as part of a nutritionally balanced diet plan providing 800 Calories or more per day when the diet plan is specified in detail on the label or in labeling that accompanies each package of the product. Labels and labeling of products in this category will be required to bear the following warning statement:

> Warning.—Use only as directed in the diet plan described herewith (the name and specific location in labeling of the diet plan may be included in this statement in place of "diet plan described herewith"). Do not use as the sole or primary source of calories for weight reduction.

4. All references to "weight maintenance" have been deleted from the tentative final rule.

5. The label warning proposed in § 101.17(d)(2) has been revised to read:

> Warning.—Use this product as a food supplement only. Do not use for weight reduction.

This warning as now set forth in § 101.17(d)(3) of this tentative final rule would be required on the label and labeling of protein supplements that "derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these and that are specifically promoted for purposes other than weight reduction."

V. Summary of the Comments and the Commissioner's Responses

A total of 250 comments were received in response to the December 2, 1977 proposal. A summary of the points raised in the comments and the Commissioner's responses to them follow:

A. Alternative Courses of Action

In the proposal, the Commissioner invited comment on alternative courses of action available in the event that it was concluded that these protein products present a risk to public health that cannot be controlled adequately by the use of label warning requirements. Most of these alternatives involved a partial or total ban of some of the protein products.

1. Several comments simply favored, or opposed, banning liquid protein products. The comments did not generally support their positions with data or information; some of the comments provided testimonial statements to support their positions. For example, several persons stated that they had used these products without harm or side effects with considerable benefit as food supplements. Others urged banning liquid protein products because they or members of their family had become seriously ill or died, and they attributed these consequences to consumption of liquid protein products. None of these comments, however, could be considered as providing clinical or other scientific evidence to support its respective positions.

The Commissioner advises that the provisions of the tentative final rule are based on the scientific and medical evidence on file with the Hearing Clerk; testimonial statements without clinical or other scientific evidence were considered only to the extent that they reflected consumer opinion.

This tentative final rule does not include any provisions to ban any of the protein products mentioned in the proposal. The Commissioner has concluded that the appropriate regulatory response at this time—given the available scientific evidence and the regulatory options under the law—is to require warning label statements on these protein products to ensure that consumers are informed of the health risks associated with extremely low calorie diets, including those consisting primarily of protein. The reasons for this decision are explained below in response to other comments. The Commissioner fully expects that the warnings will control the risk to public health presented by use of protein products as the principal component of very low calorie diets.

2. A number of comments opposed a ban of liquid protein products on the basis that FDA lacked scientific evidence that liquid protein products were the causative agent involved in the reported deaths mentioned in the proposal. Some comments also pointed out that no toxic or poisonous substances have been found in protein supplements, in general, or in liquid protein products in particular.

As explained above, available data strongly suggest that the protein products used by the decedents in the reported cases were responsible for their deaths. The agency is continuing to explore this likelihood. The evidence to date, however, does not suggest that protein supplements or hydrolysates of collagen or other low quality proteins are poisonous or toxic *per se*.

When these products are used as the sole or primary source of calories for extended periods of time in a very low calorie diet (less than 800 Calories per day), serious illness or death may result. Many of these protein products are promoted for use to reduce weight. From popular books on the subject

and from other sources, consumers readily infer that the products can be used safely in very low calorie diets, and there is ample evidence that consumers use them in this manner. Thus, it is apparent that the products have been widely promoted without adequate attention to the risks inherent in their use.

Certain of these products may, under careful medical supervision, ultimately prove to be beneficial in the dietary management of carefully selected cases of obesity. A ban on the sale of these products could prevent further exploration of the value of these products. A requirement for label warnings on the other hand, will, it is expected, alleviate indiscriminate use of these products by persons without medical need and without the expertise to use them safely.

3. In the preamble to the proposal, the Commissioner solicited comments on several alternative legal theories to regulate these protein products under the Federal Food, Drug, and Cosmetic Act. Specifically, comments were sought on deeming protein products to be: (1) "unfit for food" and thus adulterated within the meaning of section 402(a)(3) of the act (21 U.S.C. 342(a)(3)); (2) "unapproved food additives" under sections 201(s) and 409 of the act (21 U.S.C. 321(s) and 348) and thus adulterated within the meaning of section 402(a)(2)(c) of the act (21 U.S.C. 342(a)(2)(c)); and (3) "new drugs" within the meaning of section 505 of the act (21 U.S.C. 355).

These three alternative legal theories were all opposed in the comments. A number of comments contended that the phrase "unfit for food" in section 402(a)(3) of the act applies only to the intrinsic qualities of food, such as odor, texture, and taste, and not to extrinsic qualities such as the intended use of the product. Several comments on the "food additive" alternative pointed out that protein is recognized as safe for use in the human diet for its nutritional value and that it was extensively used before September 6, 1958 (this latter point was presumably an argument that protein is generally recognized as safe (GRAS) based on common use in food before September 6, 1958. (See section 201(s) of the act and 21 CFR 170.30)). Other comments contended that protein supplements are safe under the conditions of their intended use and that improper use by consumers is not an appropriate basis on which to reclassify protein as an "unapproved food additive." Finally, comments on the "new drug" option asserted that protein supplements do not cause weight loss or cure obesity and are not represented for a therapeutic use. The comments argued that these protein products are therefore not properly classified as new drugs.

As stated above, the Commissioner has decided not to ban the sale or impose other direct limits on the availability of these protein products at this time. Consideration of the validity of the three alternative legal theories, each of which is intended to support a ban on the sale of the protein products, is thus unnecessary.

4. One comment suggested that the act be amended to establish a new class of "medical foods" that would restrict these products to controlled use similar to that for prescription drugs without also subjecting the products to the expensive and time-consuming new drug application process.

The suggestion that there be a category of "medical foods" is worthy of consideration. The public health problem concerning protein products used for weight reduction cannot, however, await enactment of new legislation authorizing such a category of products, but rather must be dealt with using the regulatory authority currently available to FDA.

5. A few comments asked why products that pose health hazards are permitted to be sold, and suggested that the safety of those products be reviewed by FDA before they are marketed.

These protein products are not inherently dangerous; rather, the risks to the health of consumers that the products present arise from the purposes for which they are used and the manner of use. The label warning that would be required under this tentative final rule is directed at the "misuse" problem. If consumers abide by the warning, the risks of using these protein products will be alleviated. Because the products may be helpful and safe when used in carefully selected cases and under rigid medical supervision, a ban would be inappropriate.

Moreover, FDA does not have the authority to require premarket clearance of foods other than those regulated as food or color additives.

6. One comment suggested that instead of banning liquid protein altogether, FDA should require label directions or instructions that advise users to use the product so that only about a pound of weight is lost each week.

It would be neither feasible nor appropriate for FDA to attempt to develop directions for the use of the many protein products that are covered by this tentative final rule. The label warning informs consumers that there are substantial risks associated with these products when used to achieve rapid weight loss and directs consumers to consult a physician.

7. One comment pointed out that very low calorie protein diets were not designed or intended for use without close medical supervision or for patients with relatively modest degrees of obesity. This comment urged that very low calorie protein diets be restricted to ethical promotion by the medical profession only.

The Commissioner agrees that very low calorie protein diets should not be used without close medical supervision. This tentative final rule would require that the label of protein products inform the consumer of this fact. As discussed above, restriction of these products to use only by the medical profession would require classification of these products as drugs, an approach that is very difficult under the act, and in the judgment of the Commissioner, unnecessary at this time.

8. One comment requested that the "clubs" or groups sponsoring liquid protein weight reduction programs be banned.

The Food and Drug Administration does not have the authority to ban such "clubs" or groups.

9. One comment recommended that protein products be made under quality control standards supervised by FDA.

The Commissioner is not convinced that such a procedure would alleviate the public health problems with which this rulemaking is concerned. There is no evidence to date that poor manufacturing practices caused the deaths associated with protein supplements used for weight reduction. The problem appears to be related to the use of these products in very low calorie diets for extended periods of time; a label warning requirement is a more appropriate solution to the problem.

10. A few comments requested that the problems associated with the use of protein supplements be dealt with by educating consumers about proper nutrition and diet.

The Commissioner agrees that informing consumers about proper nutrition and diet is an important function for FDA. FDA and other agencies have conducted, and will continue to conduct, nutrition information programs. Consumer education programs alone, however, cannot solve the immediate problems associated with the use of protein supplements as the sole or primary source of calories in a very low calorie diet. The effects of education programs are often seen only over relatively long periods; a label warning, which is a form of education, however, will have a more immediate impact on consumer behavior. It is, therefore, the preferable regulatory response to the evidence of risks associated with the use of these protein products.

B. LEGAL ISSUES

11. Several comments questioned FDA's authority to promulgate the proposal. These comments asserted that the proposal was arbitrary and capricious and in excess of FDA's statutory authority. One comment asserted that none of the sections of the act cited in the proposal, e.g., sections 201(n), 402(a), 403, 505, and 701(a), provides substantive legal authority for the Commissioner to require the proposed warning statements. One comment asserted that section 402(a) does not specifically grant authority to require a warning statement.

The Commissioner disagrees with the comments. Section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)) provides broad authority to FDA to issue regulations "for the efficient enforcement" of the act. *National Nutritional Food Association* v. *Weinberger*, 512 F. 2d 688, 695–701 (2d Cir. 1975). Section 403(a) of the act provides that a food is misbranded if "its labeling is false or misleading in any particular"; and section 201(n) of the act provides that in determining whether the label or labeling of a product is false or misleading, it is appropriate to consider both the information contained in, and that which is omitted from, the label and labeling. In light of the evidence of the risks to health associated with the use of protein supplements in very low calorie diets, failure to warn consumers of those risks on the label of protein supplements constitutes omission of a material fact about the products. Omission of that fact renders the label for the products "false or misleading" and the products, therefore, misbranded. The authority of the Commissioner under sections 201(n), 403(a), and 701(a) of the act to issue regulations to impose a warning requirement to prevent the products from being misbranded is well-established. Indeed, these three sections have been the basis for many labeling regulations issued by FDA in recent years. See, for example, 21 CFR 101.9 and Parts 102 and 104.

12. Several comments requested that public hearings be held to gather information about the potential health hazards and benefits derived from use of protein supplements. These comments argued that protein supplements are properly categorized as foods for special dietary use and the sole authority for promulgating regulations for these products is derived from sections 403(j) and 701(e) of the act. Under the formal rulemaking procedures embodied in section 701(e), promulgation of a final regulation would be followed by the opportunity to file objections and requests for a formal evidentiary hearing.

The Commissioner rejects the suggestion that a public hearing be held to gather additional information about the risks and benefits of protein supplements. While public legislative style hearings are often a useful tool to gather information during the administrative process, and, in fact, have been frequently used by FDA for that purpose, such a hearing in this case is not necessary. FDA has obtained extensive information about the protein supplements through the comments on the proposal, the telephone survey, the investigative work of FDA and CDC scientists, and the efforts of the USPHS Task Force. Additional information will, no doubt, be supplied in comments on this tentative final rule. A public hearing to gather additional information would not, therefore, be likely to yield substantial new information that would justify a further delay in issuing a final rule.

The Commissioner also rejects the contention that the warnings that would be required under this tentative final rule must be issued under authority of section 403(j) of the act (21 U.S.C. 343(j)) and, therefore, in accordance with the procedures in section 701(e), which, as the comment noted, would provide for the opportunity for a formal evidentiary hearing before a warning could be required.

Unlike section 403(a) of the act, which embodies a broad prohibition on false or misleading labeling for all food, section 403(j) is narrow: it addresses only the authority of FDA to require a particular type of information on the labels of a category of foods (foods for special dietary use), i.e., information concerning their "vitamin, mineral, and other dietary properties as the Secretary determines to be * * * necessary in order to fully inform purchasers as to" their value for dietary use. Thus, section 403(j) is subject to two limitations: (1) it applies only to foods for special dietary use; and (2) even then only to certain types of information about those foods.

Although there is clearly some overlap between the coverage of section 403(a) and section 403(j), it is also clear that they are not coextensive. Foods for special dietary use are subject to both sections, and compliance with FDA regulations issued under section 403(j) does not obviate the need for the product to comply with regulations issued under other sections of the law, including section 403(a). *National Nutrition Foods Association* v. *FDA*, 504 F. 2d 761, 775 (2d Cir. 1974); *United States* v. *An Article of Food * * * Labeled in Part * * * Nuclomin, etc.*, 482 F. 2d 581 (8th Cir. 1973) and *United States* v. *An Article of Food, etc.*, 377 F. Supp. 746 (E.D.N.Y. 1974).

Contrary to the assertion in the comments, FDA is not restricted to the authority in section 403(j) in issuing regulations that apply to the labels of foods for special dietary use. Instead, FDA may opt to proceed under either section, depending on the particular circumstances and the type of regulation that the agency intends to issue. In this instance, the agency has elected to proceed under sections 201(n), 403(a), and 701(a) of the act. Those sections do not require, as does section 701(e), that a formal evidentiary hearing be held, and unless comments on this tentative final rule persuade the Commissioner that he is required to convene one, no hearing will be held.

13. A few comments opposed the proposal on procedural grounds, asserting that not all of the material relied on by the Commissioner in promulgating the proposed rule was placed on file with the Hearing Clerk as required by § 10.40 (b)(1)(iii) (21 CFR 10.40(b)(1)(iii)). In addition these comments argued that pertinent background information was not readily available in response to requests under the Freedom of Information Act and, thus, could not be properly reviewed within the comment period on the proposal. The comments also stated that because the proposal was issued during a holiday season, the 30-day comment period was unreasonably short.

The Commissioner acknowledges that, through oversight, some of the data and information FDA relied on in issuing the proposal were not on file with the FDA Hearing Clerk when the proposal was published in the FEDERAL REGISTER, or otherwise readily available to the public. This oversight, was corrected promptly after it was brought to the Commissioner's attention. Since then, all information on the use of protein supplements in very low calorie diets has been placed on file with the FDA Hearing Clerk upon receipt. In addition, much of this information has been made available to the interested persons in response to requests under the Freedom of Information Act. In light of the additional opportunity for comment on this tentative final rule, the issues raised by the comments on the brevity of the initial comment period and the unavailability of the underlying data are moot.

14. Some comments objected to the proposal on the grounds that a meeting held on October 20, 1977 between five clinicians specializing in the treatment of obesity and several FDA employees was convened in violation of the Federal Advisory Committee Act (5 U.S.C. App. I) because the meeting was not open to participation by interested persons and because minutes of

the meeting and other pertinent documents were not readily available to the public. The comments also argued that any information received at this meeting of an ad hoc "advisory group" could not be relied upon as a basis for the proposed action until such time as the meeting was properly convened.

The arguments raised by these comments have also been made in a lawsuit filed against FDA. *National Nutritional Foods Association, et al.* v. *Califano, et al.*, 77 Civ. 6083 (LPG) (S.D.N.Y., December 15, 1977). Contrary to the comments and the arguments made by the plaintiffs in the lawsuit, the October 20 meeting of the experts to share their views with FDA on a then rapidly developing public health problem was not an advisory committee meeting governed by the Federal Advisory Committee Act (FACA). Rather, the meeting was a one-time session that was able to be convened only because of the coincidental presence of the experts in the Washington, D.C. area at the time when reports of illness and injury from the protein products were beginning to reach FDA.

The group of five independent clinicians was not an "advisory committee" as that term is used in the FACA. The term connotes some type of formally structured group with a fixed membership and a defined purpose that meets on a periodic basis. In contrast, the group assembled on October 20 had no formal structure or future function as an organized group. It was convened on 2 days' notice for an informal one-time meeting to discuss the hazards of the use of protein supplements in weight reduction programs. Courts have recognized that the term "advisory committee" as used in the FACA is not all-inclusive. *Nader* v. *Baroody*, 396 F. Supp. 1231 (D.D.C. 1975), *vacated on appeal for mootness*, App. No. 74-1675 (D.C. Cir. 1977). Other cases in which courts have found groups to be advisory committees within the meaning of the FACA also support the view that the October 20 meeting was not an advisory committee meeting. See, *Center for Auto Safety* v. *Tieman*, 414 F. Supp. 215 (D.D.C. 1976); *Wolfe* v. *Weinberger*, 403 F. Supp. 238 (D.D.C. 1975); *Gates* v. *Schlesinger*, 336 F. Supp. 797 (D.D.C. 1973).

The Commissioner advises that all documents made available to, or prepared for or by, the group of five clinicians who attended the October 20 meeting have been placed on file with the FDA Hearing Clerk. Thus, in addition to the other data on file, interested persons may review, assess, and comment on the advice provided by the five experts.

As noted above, the contentions made in the comments have also been made in a lawsuit against FDA. The court in *National Nutritional Foods Association* has declined to grant any relief against FDA on the basis of the allegations concerning the plaintiff's claims (Opinion No. 47567, filed August 29, 1978). In light of the disposition of that lawsuit, the Commissioner considers this matter to be moot.

C. SCIENTIFIC ISSUES

15. Several comments expressed the opinion that no particular protein is responsible for the reported deaths because protein is a necessary nutrient to sustain life. The comments argued that any food, which is used as the major source of calories in a diet where calorie consumption is reduced to 200 to 400 calories per day, would most likely lead to the same results. The comments objected to the proposed warning statement for protein supplements unless warning statements were required for other foods promoted for weight reduction, because such action is discriminatory and misleading.

The Commissioner rejects these arguments. Neither the proposed warning nor the warning labeling required by this tentative final rule states that protein itself is harmful or causes death. The warning labeling is directed at correcting an existing public health problem associated with the use of protein products for weight reduction.

In addition, there is no evidence to indicate that any other foods promoted for weight reduction have created a similar public health problem. All of the reports of illness and death summarized above have been associated with one or more of the protein products identified in this tenative final rule.

Many of these protein products are explicitly promoted for use to reduce weight; their use is also encouraged by popular books and other material from which consumers may reasonably infer that these protein products can be safely used in very low calorie diets. Because the evidence suggests that the dietary regimen should be used only under close medical supervision, consumers must be informed of this fact; the proposed label warning statements will so inform consumers.

16. A number of comments objected to the breadth of the proposed warning on the basis that not all protein products were implicated in the reported deaths. The comments argued that a warning statement should not be required for high quality protein products because there is no evidence that these products are harmful. Many comments were accompanied by reports and copies of scientific papers or studies in an effort to support assertions that particular products were safe when used as directed and therefore should not be subject to the proposed label warning requirements.

The Commissioner recognizes that many of the high quality protein products on the market can be safely used for a limited period of time when consumed as part of a nutritionally balanced diet plan that provides 800 calories or more per day. The Commissioner is also mindful that without proper guidance these same products may be used by consumers as the sole or primary source of calories in a very low calorie diet (e.g., less than 800 calories per day).

On the basis of the evidence currently available, the Commissioner concludes that there are significant health risks associated with any diet that severely reduces caloric intake or that creates a large negative calorie balance. It also seems likely that the greater the calorie deficit is, the greater the health risk becomes.

The metabolism of the body changes when the diet provides fewer calories per day than the body uses. The kinds of metabolic changes and the degree to which these changes occur depend upon the actual calorie deficit, the rate at which the calorie deficit is achieved, and the composition of the diet providing the calories. It can be shown, for example, that a significant calorie deficit can increase the risk of infection (Jonxis, J. H. P., *Nutrition Reviews*, 4:97, 1946). In patients who are extremely obese, these risks must be taken into consideration when assessing the potential increase in health benefits to be derived from successful loss of weight.

If a negative calorie balance is permitted to continue for too long in an unsupervised manner, death is certain to result (Brozek, J., et al., *American Review of Soviet Medicine*, 4:70, 1946). The rate at which the overall caloric deficit is achieved can also alter the risk of serious harm or death. That is to say, a drastic caloric deficit achieved in a short period of time may present a serious health hazard without causing a significant change in body fat or protein stores (Garnett, E. S., et al., *Lancet*, 1:914, 1969; and Duncan, G. G., et al., *Annals of the New York Academy of Sciences*, 131:632, 1965). In contrast, there is evidence that prisoners of war interred in concentration camps (Pollack, H., *Nutrition Reviews*, 4:63, 1946; and unpublished data) and civilians in Western Holland during the winter of 1944 (*Nutrition Reviews*, 4:28, 1946; and Jonxis, J. H. P., *Nutrition Reviews*, 4:97, 1946) were able to subsist on approximately 800 to 1,200 calories per day for extensive periods of time while catabolizing virtually all body fat and significant amounts of body protein before dying from starvation and the rigors of war.

On the other hand, it has been shown that total starvation can result in death while significant body fat remains unmetabolized. It is unknown whether this difference is due to the magnitude of the caloric deficit *per se* or whether deprivation of other essential nutrients is a critical contributing factor in causation of death. Common experience from clinical research (*Nutrition Reviews*, 24:6, 1966; and Blondheim, S., et al., *Lancet*, 1:250, 1965) and from the general practice of consumers indicates that a wide variety of nutritionally balanced diets providing on the order of 800 to 1,000 calories per day for limited periods of time can be used for weight reduction without the need for close medical supervision. It is advisable, however, for those wishing to lose weight to consult with a physician before undertaking any weight reducing program. When the daily calorie intake is reduced to 200 to 400 calories, however, such as in the protein-sparing modified fast (PSMF), the health risk is significant enough to require the close medical supervision of a professional knowledgeable of fasting metabolism and skilled in the clinical management of obesity.

The Commissioner finds it significant that most of the comments from the scientific community, including those promoting the use of a PSMF program, were in agreement that a low calorie diet (less than 800 calories) should not be used in the treatment of obesity without proper medical supervision. Furthermore, most scientists agreed that a diet composed only of protein or protein-derived products supplying only a small portion of daily caloric needs would be contraindicated for infants, children, pregnant or nursing women, and most individuals with renal, hepatic, or serious vascular disorders.

Consumers, therefore, need to be informed of the serious health risk of undertaking such a diet without proper medical supervision. The tentative final rule does, however, distinguish between those protein products that are promoted generally for weight control and those promoted as part of a nutritionally balanced diet providing 800 Calories or more per day. The Commissioner agrees that for the latter products the warning should be limited to a caution against possible abuse.

The tentative final rule does not distinguish between the protein products on the basis of the biological quality of the proteins. One of the 16 women whose deaths were unassociated with antecedent disease was utilizing a powdered product containing milk-derived proteins that are widely recognized for their high biological quality. These high quality proteins contributed about 200 of a total intake of 380 Calories per day for approximately the last half of the individual's 24-week weight reduction diet. The remaining 180 Calories per day came from carbohydrate and a second, gelatin-derived powdered protein product. During the first half of the 24-week diet, a typical gelatin-derived "predigested liquid protein" product was consumed in an amount sufficient to provide approximately 360 Calories per day. In a second case from among the 16 "cardiac" deaths without antecedent disease, the individual had followed for the major part of her dieting period a weight loss regimen which consisted of a daily intake of four cooked egg whites, the equivalent of 15 grams of protein from a gelatin-derived powdered protein product and a small amount of a fluid, hydrolyzed, plant protein concentrate product. Details of both of these deaths are on file with the FDA Hearing Clerk as Cases 37 and 29, respectively.

Hence, there is direct evidence to suggest that neither the physical form (i.e., aqueous solution or dehydrated solid) nor the biological quality of these protein products or dietary supplements is a major factor for consideration relative to causation of death. In addition, there remains the uncertainty of the relative importance of protein-derived calories as contrasted with very low caloric intakes, regardless of the source of calories. For these reasons, the thrust of this tentative final rule is directed at adherence to very low calorie protein diets and not the use of liquid or powdered, high- or low-quality protein products *per se*. The Commissioner recognizes that gaps exist in the scientific understanding of the biological effects of long-term use of protein products for rapid weight loss, and adherence to very low calorie diets generally. Nevertheless, the knowledge that does exist indicates an association between death and prolonged adherence to a very low calorie protein diet and is ample justification for this aspect of the tentative final rule.

To fully inform consumers of the risk associated with use of protein products in very low calorie diets, the requirement for a warning label would extend to all protein products that are promoted for weight reduction and that derive over 50 percent of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or combination of these. The extension of the warning to these products is justified because the products appear to pose similar risk regardless of protein quality.

There are several traditional foods such as cottage cheese and ordinary gelatin that derive over 50 percent of their calories from protein. The warning will not be required on foods that derive over 50 percent of their total caloric value from proteins but are not promoted or represented for use to reduce weight. Thus ordinary gelatin, similar in composition to the "predigested liquid protein" products would not be required to bear the warning unless the gelatin was promoted for use to reduce weight. Some of these foods, however, may be offered for sale as "reduced calorie" or "low calorie" foods in accordance with the provisions of § 105.66 (21 CFR 105.66) published in the FEDERAL REGISTER of September 22, 1978 (43 FR 43248).

For purposes of this regulation, foods labeled in accordance with the provisions of § 105.66 with representations of "low calorie" or "reduced calorie" are exempt from the label warning requirements provided no other representations are made with respect to the usefulness of the food in reducing calorie intake or body weight.

17. Several comments asserted that the reported illnesses and deaths were caused by acts of omission or commission in the administration of the protein-sparing modified fast (PSMF) program. These comments argued that the protein products currently available are not inherently unsafe, not even when used as part of adult obesity therapy, if proper supervision by professionals knowledgeable of fasting metabolism and trained in obesity therapy is obtained. One comment pointed out that the PSMF diet is accepted therapy by leading physicians in the field of "bariatrics" (study of the treatment of obesity).

The Commissioner has reviewed the data and comments on this issue and concludes that some diet plans, such as the PSMF diet, may have potential benefits when used as part of a multidisciplinary approach in the treatment of severe obesity if used under controlled circumstances and with proper medical supervision. Those potential benefits, however, do not negate the fact that there are health risks associated with such therapy.

The fact remains that products used for this type of controlled therapy are sold directly to consumers who may not be under proper medical supervision. The evidence of record shows that for some protein products, as defined in this tentative final rule, there are health risks associated with these products when used to lose weight. These risks should be made known to consumers.

18. Most comments from the scientific community, including those health professionals using the PSMF program in the treatment of obesity, agreed that a low calorie (less than 800 Calories) protein diet should not be used without proper medical supervision, and that such a diet would be contraindicated for infants, children,

pregnant or nursing women, and individuals with renal, hepatic, or serious vascular disorders. There was considerable difference of opinion, however, concerning an appropriate regulatory response that would achieve the objective of ensuring that consumers are informed of the health risks associated with the use of protein products in low calorie dietary regimens.

Most of the alternative courses of action have been discussed above. The Commissioner's tentative conclusion is that the warning label requirements set forth below will be sufficient to ensure that consumers are informed of the risks associated with the use of protein products as the sole or primary source of calories in a low calorie diet and will minimize the use of these products to achieve rapid weight reduction without proper medical supervision.

19. Several comments offered possible explanations for the reported illnesses or deaths. One comment suggested that the illnesses and deaths were caused by an amino acid imbalance; the comment included references to scientific papers that discussed the effects of amino acid imbalance in man. Other possible direct causes of death or illness mentioned in comments are electrolyte imbalances involving potassium, calcium, or magnesium deficiency or a complex combination of electrolytes. Also mentioned as a possible cause was release of toxic substances from the fat depots of the body after weight loss.

A comment from a physician stated that he had observed several cases of alopecia of the telogen effluvium type (a sudden onset of hair loss in a generalized pattern). The comment asserted that this hair loss was caused by an amino acid deficiency or essential trace metal deficiency as a result of recent weight loss through use of hydrolyzed protein products.

The Commissioner advises that FDA is continuing to investigate all of the possible causes of illnesses and deaths mentioned above. The evidence available now, however, suggests that rapid weight loss in and of itself presents serious risks to individuals. The Commissioner is convinced that very low calorie protein diets can present serious health risks to individuals. The Commissioner is also aware that obesity itself presents certain health risks. The proposal has generated many comments which assert that a protein-sparing modified fast dietary regimen used as part of a multidisciplinary approach to obesity therapy has proved beneficial to many obese individuals. None of these comments, however, suggests that the weight loss benefits were gained without some risk.

The warning label requirements in this tentative final rule are not meant to imply that risk can be avoided by consultation with a physician. A physician can only reduce these risks by effective supervision and monitoring of the patient.

The Commissioner believes that the label warning requirements and the associated publicity concerning the possible health risks of a very low calorie protein diet will result in a heightened awareness by individual patients of the need for extreme care in undertaking a diet regimen as well as the need to consult a physician before doing so. This awareness is expected to generate a candid dialogue between doctors and patients concerning the risks of any diet therapy as well as the benefits provided by weight reduction.

D. SCOPE OF THE REGULATION

A majority of the comments supported FDA's efforts to require label warnings on protein products for which there is sound evidence that their use is associated with illness or death. Many of the comments, however, objected to the scope of the proposed regulation and opposed several aspects of the proposed warning language that describes the kinds of products that would be required to bear a warning label.

20. Several comments were opposed to proposed § 101.17(d)(1) which would have required "any product composed essentially of protein or protein hydrolysates which is intended for use in a weight reduction or maintenance dietary regimen" to bear the warning label. The comments stated that this language was both vague and overly broad because it could be interpreted to apply to a variety of products which pose no health risks. Many of the comments listed specific examples of protein products that they argued should not be required to bear the proposed warning statement because of the absence of evidence that their use presents any risks to health.

The tentative final rule has been revised to define more clearly the products that are required to bear a label warning statement. The primary group of products affected are those protein products that derive 50 percent or more of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or a combination of these. The three warnings that would be required are tailored to categories of products depending on the representations made about their use and the manner of use intended for them by their manufacturer or promoter.

21. Several comments stated that the warning label requirement should apply only to "liquid protein products" that are derived from whole protein sources or are hydrolysates of proteins which are of low nutritional value, such as collagen or gelatin, because these are the products associated with the reported deaths and were clearly the products of concern in discussions between FDA and the ad hoc advisory group. These comments argued that the protein quality of these products differs markedly from the "powdered protein" products available on the market that have a high protein quality and are safe and nutritious protein foods when used in the traditional manner as a food supplement. Several comments provided specific examples of dietary programs that they argued were recognized as safe by the nutrition and medical community.

The Commissioner acknowledges that these comments have some merit. When used as part of a structured, nutritionally balanced diet providing 800 or more Calories per day, protein products of good biological quality are considered to be safe when used for a limited period; however, the Commissioner has decided that no distinction should be made on the basis of protein quality. The course of action described by this tentative final rule distinguishes between those protein products that are generally promoted for weight control and those that are promoted as part of a structured nutritionally balanced diet providing 800 Calories or more per day when this diet plan is specified in detail on the label or in the labeling.

The warnings are directed at the concern that protein products not be used by consumers as the sole or primary source of calories in the diet to achieve rapid weight loss without close medical supervision.

22. Several comments were opposed to the language of proposed § 101.17(d)(2), which states, "Special dietary food products which are composed essentially of protein or protein hydrolysates, or which use the word 'protein' in their statement of identity, or otherwise emphasize the word 'protein' in their label or labeling, shall bear the following warning if they are not intended for use in a weight reduction or maintenance dietary regimen."

The comments argued that the language of this section was vague and overly broad and included products that were never intended to be used for weight reduction. Many more comments strongly objected to the inclusion of a provision for a warning statement requirement solely because the word "protein" is emphasized in labeling. These comments argued that many regulations promulgated by FDA permit or require the term "protein" in the statement of identity for that food, and that these products should not be required to bear a warning label.

The Commissioner has amended the tentative final rule to define more clearly the products that are required to bear a label warning statement. Under the tentative final rule, protein supplements that are promoted for purposes other than weight reduction, but which derive over 50 percent of their total caloric value from protein, protein hydrolysates, amino acid mixtures, or a combination of these, would be required to bear the following warning:

Warning.—Use this product as a food supplement only. Do not use for weight reduction.

E. TEXT OF THE WARNING STATEMENT

Several comments suggested alternative or modified statements that they argued would clarify or reduce the severity of the warning.

23. One comment asserted that the wording sequence of the warning in proposed § 101.17(d)(1) insinuates that protein substances are hazardous and leaves the impression that protein is a toxic or poisonous substance. The comment suggested modifying the wording of the warning to clarify that it is the manner in which protein substances are used, rather than the protein itself, which is the basis for the warning. The comment suggested the following alternative warning statement:

Warning.—Very low calorie protein diets may cause serious injury or death WHEN USED WITHOUT MEDICAL SUPERVISION FOR WEIGHT REDUCTION OR MAINTENANCE. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children or pregnant or nursing women.

The commissioner does not agree with that comment. The text of the warning statement in proposed § 101.17(d)(1) of the December 1977 FEDERAL REGISTER document does not state that protein is a toxic or poisonous substance but rather that "very low calorie protein diets" may cause serious illness. In view of the fact that some of the reported deaths were of individuals under the supervision of a doctor, it would be misleading to permit a warning, such as the one suggested by the comment, which implies that there are no risks involved when very low calorie protein diets are undertaken with medical supervision. These health risks still exist. Although medical professionals trained in the treatment of obesity may be able to reduce these risks through monitoring the patient carefully, most physicians will agree that there will still be risks associated with such treatment.

24. One comment argued that the hazard of death implied by the proposed warning statement was unjustified. In addition, this comment argued that the reference to specific medical conditions in the proposed warning should be omitted because this would dilute the overall impact of the warning by implying that only consumers with specific medical problems need to be concerned. Accordingly, the comment suggested that the warning statement be revised to read as follows:

Warning.—Do not use for rapid weight loss without continual supervision by a physician knowledgeable with such therapy.

The Commissioner rejects this alternative text for the warning statement. There is no doubt that consumers who adhere to a very low calorie protein diet (less than 800 Calories per day) without proper supplementation and monitoring by a physician risk serious illness that may be fatal. In addition there are medical conditions, identified by those physicians commenting on the proposal, for which a protein-sparing modified fast is contraindicated. The warning proposed by the comment would not adequately inform consumers of those facts.

25. Several comments suggested much more general warning statements such as: "Formula products used for rapid weight loss require obligatory supervision of this therapy by a physician knowledgeable with such therapy" and "Warning: very low calorie diets contianing 400 Calories or less per day must be used under the direct supervision of a physician."

The Commissioner does not find any of these suggested alternatives satisfactory because they do not adequately address the health risks involved. The reasons for this conclusion have already been stated in this preamble.

26. One comment objected to the lack of proper definition of the phrase "very low calorie protein diet" and suggested that the warning be amended to read as follows: "Not to be used for weight reduction nor as a sole diet without proper medical supervision. Do not use for any purpose without medical advice if you are taking medication. Not for use by infants, children or pregnant or nursing women."

The Commissioner rejects this suggested alternative because it does not properly identify the health risk and goes no further in clarifying what is meant by a "very low calorie protein diet." The approach established by this tentative final rule does distinguish between those products promoted generally for weight reduction and those products promoted for use as part of a nutritionally balanced diet that contributes 800 or more Calories per day. Any lower caloric intake would be considered a very low calorie diet.

27. Other comments suggested that powdered protein products were distinct from the "predigested liquid protein" products, were not harmful to health, and did not present the same problems of misuse. These comments argued, therefore, that these products should not be required to bear a warning statement but suggested instead a label statement that could be placed on the label as part of the directions for use. One comment suggested the following statement: "Anyone considering a weight reduction program should first obtain competent medical advice. Use this product as part of a well balanced diet."

One other comment suggested that powdered proteins bear the following:

Warning.—If you are under medical care and/or if you plan to lose twenty-five pounds, please consult with your doctor before beginning this or any other dietary program.

The Commissioner does not agree. Many of the powdered protein products are used in the same manner as the protein hydrolysates and the evidence indicates that the health risks are similar for liquid or powdered protein products used as the sole or primary source of calories in a very low calorie diet. Because there is no substantial difference between a liquid protein hydrolysate and the same product after dehydration, the physical form in which the protein product is sold is not important in assessing the health risks associated with use of the product. The provisions of this tentative final rule do, however, distinguish between those products promoted in a general way for weight reduction and those promoted for use in a nutritionally balanced diet plan providing 800 or more Calories per day.

28. A few comments suggested that protein products be divided into categories on the basis of nutritional quality. Several recommended that protein products with a protein efficiency ratio (PER) of 50 percent that of casein be treated differently from low quality protein products and suggested alternative warning statements for the two types of protein products. For products composed essentially of protein of poor nutritional quality that are labeled for use in weight reduction, the following warning was suggested:

Warning: The protein in this product is of poor nutritional quality. Low calorie diets provided primarily by protein of this quality may cause serious side effects such as ———— and even illness and death. DO NOT USE THIS PRODUCT AS THE SOLE OR PRIMARY SOURCE OF CALORIES FOR WEIGHT REDUCTION WITHOUT PRIOR MEDICAL EXAMINATION AND CONTINUED MEDICAL SUPERVISION. Do not use for any purpose without medical advice, especially if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

For products composed essentially of protein of good nutritional quality that are labeled for use in weight reduction, the comment suggested the following warning:

Warning: Low calorie diets provided primarily by protein may cause side effects such as ————————.
Do not use this product as the sole or primary source of calories for weight reduction without prior medical examination and continued medical supervision.

For products composed essentially of protein of poor nutritional quality that are not labeled for use in weight reduction, the comment suggested the following warning:

Warning: The protein in this product is of very poor nutritional quality. DO NOT USE THIS PRODUCT AS THE SOLE OR PRIMARY SOURCE OF CALORIES FOR WEIGHT REDUCTION. Low calorie diets provided primarily by protein of this quality may cause side effects such as ———————— and even illness and death.

For products composed essentially of protein of good nutritional quality that are not labeled for use in weight reduction, the comment suggested the label statement:

Do not use as the sole or major source of calories without medical supervision.

There is evidence to suggest that even high quality protein products pose a health risk when used as the sole or primary source of calories in a very low calorie dietary regimen (e.g., less than 800 Calories per day). The range of warnings suggested by the comment would not adequately take this fact into account.

29. A few comments recommended that the proposed warning apply only to protein products or special dietary foods which derive 60% (some suggested 50%) of their caloric value from protein or protein hydrolysates.

The Commissioner has adopted this approach in the tentative final rule in an attempt to define more clearly the phrase "composed essentially of protein" used in the proposal. The FTC has issued a proposed trade regulation on advertising and labeling of protein supplements. One proposed provision of the FTC rule would require a strong warning for "any protein supplement which derives 50 percent or more of its calories from the protein content of the food." Although the FTC proceedings in large measure antedated the current public health problem, the Commissioner concludes that the "50 percent of calories" definition is appropriate here also. This definition of protein products covers all of the products currently being used under the protein-sparing modified fast and other very low calorie dietary regimens.

F. MISCELLANEOUS COMMENTS

30. One comment requested that the proposed regulation be clarified to exempt bulk protein ingredients used as components of other foods from the label warning requirements.

The Commissioner advises that, under the provisions of the tentative final rule, bulk protein products sold only for use as components of other foods are not subject to the label warning requirements. Therefore, no specific exemption from these label warning requirements is needed.

31. Several comments suggested that in light of the FTC proceedings relative to protein supplement labeling, the FDA should either coordinate its proposed regulation with that of the FTC or defer its proposal until the FTC proceeding is completed. Additionally, the Federal Trade Commission submitted comments on the proposal, requesting that the proposed regulation specifically state that the warning label requirements promulgated by the FDA are separate from and in addition to labeling requirements established by the FTC for protein supplements.

The Commissioner advises that FDA has worked closely with the FTC throughout the investigation of health problems associated with protein supplements. This tentative final rule includes a provision which specifically states that the warning label requirements promulgated by FDA are in addition to, and separate from, any labeling requirements established by the FTC for protein supplements.

Tentative effective date: The Commissioner is proposing that the label and labeling of foods introduced or delivered for introduction initially into interstate commerce on or after the 60th day following publication of a final regulation governing the labeling of protein products shall bear the warning statement appropriate for that food.

The Commissioner has carefully considered the environmental effects of the tentative final rule 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 Analysis Report has been filed with the FDA Hearing Clerk.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a) 371(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 101 be amended in § 101.17 by adding new paragraph (d) to read as follows:

§ 101.17 Food labeling warning statements.

* * * * *

(d) *Protein products.* (1) The label and labeling of any food product that derives more than 50 percent of its total caloric value from either whole protein, protein hydrolysates, amino acid mixtures or a combination of these and that is represented on the label or in labeling or is otherwise promoted for use to reduce weight shall bear the following warning:

Warning.—Very low calorie protein diets may cause serious illness or death. DO NOT USE FOR WEIGHT REDUCTION WITHOUT MEDICAL SUPERVISION. Use with particular care if you are taking medication. Not for use by infants, children, or pregnant or nursing women.

Food labeled in accordance with the provisions of § 105.66 of this chapter and bearing representations of "low calorie" or "reduced calorie" are exempt from the label warning requirements of this paragraph if no other representations are made with respect to the usefulness of the food in reducing calorie intake or body weight.

(2) Products described in paragraph (d)(1) of this section are exempt from the labeling requirements of that paragraph if the protein products are promoted as part of a nutritionally balanced diet plan providing 800 or more calories (kilocalories) per day and the label or labeling of the product specifies the diet plan in detail and the label and labeling bear the following warning statement:

Warning.—Use only as directed in the diet plan described herewith (the name and specific location in labeling of the diet plan may be included in this statement in place of "diet plan described herewith"). Do not use as the sole or primary source of calories for weight reduction.

(3) The label and labeling of protein supplements that derive more than 50 percent of their total caloric value from either whole protein, protein hydrolysates, amino acid mixtures, or a combination of these and that are specifically promoted for purposes other than weight reduction shall bear the following warning:

Warning.—Use this product as a food supplement only. Do not use for weight reduction.

(4) The provisions of this paragraph are separate from and in addition to any labeling requirements promulgated by the Federal Trade Commission for protein supplements.

(5) The warning statements required by paragraph (d) (1), (2), and (3) of this section shall appear prominently and conspicuously on the principal display panel of the package label and on any other labeling. The warning state-

ments shall be printed in bold letters and shall be enclosed by lines forming a rectangle in an area separated from other written, printed, or graphic matter. The capitalized sentences in paragraph (d)(1) of this section shall be so capitalized on all labels and labeling. The height of the printed letters comprising the warning statement required by paragraph (d)(1) of this section shall not be less than one-half of the height of the largest type appearing on the label of the product. In no case shall the warning statement be printed in letters less than 1/16 of an inch. The warning statements required by paragraph (d) (2) and (3) of this section shall be printed in letters no less than 1/16 of an inch.

Interested persons may, on or before February 27, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this tentative final rule. 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: December 19, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-36219 Filed 12-28-78; 8:45 am]

[4110-03-M]

[Docket No. 75N-0318]

PART 105—FOODS FOR SPECIAL DIETARY USE

Label Statements

AGENCY: Food and Drug Administration.

ACTION: Extension of Effective Date of Final Rule.

SUMMARY: This notice extends the period of time for compliance with the labeling requirements for special dietary foods used in reducing or maintaining body weight or caloric intake and in the diet of diabetics.

DATE: All products initially introduced into interstate commerce after July 1, 1980, shall comply with the labeling requirements set forth in §§ 105.66 and 105.67.

FOR FURTHER INFORMATION CONTACT:

Taylor M. Quinn, Bureau of Foods (HFF-300), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-245-1243.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of September 22, 1978 (43 FR 43248), the Food and Drug Administration (FDA) issued a final order setting forth regulations concerning label statements on foods used in reducing or maintaining body weight or in the diet of diabetics and related misleading label statements on other foods.

The final order established a compliance date of July 1, 1979, for the initial introduction into interstate commerce of such foods.

The Commissioner of Food and Drugs has received a petition from the National Food Processors Association (NFPA) requesting a delay of the effective date of the regulation from July 1, 1979, to July 1, 1981. The Commissioner also has received similar requests from CFS Continental and International Dairy Queen, Inc., (IDQ) concerning the effective date of the regulation.

The NFPA and IDQ petitions and the CFS request state that the effective date of July 1, 1979, would not allow enough lead time to reduce current label inventories substantially or to obtain new labels in time to comply with the effective date.

Further, the NFPA petition states that most producers of dietary canned foods have just completed their seasonal canning and have substantial inventory of shelf-stable products, all of which cannot be shipped before July 1, 1979.

The NFPA and IDQ petitions and the CFS Continental letter are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

The Commissioner has reviewed the petitions and the letter of request and has determined that there are grounds for extending the efffective date of compliance with §§ 105.66 and 105.67 (21 CFR 105.66 and 105.67). However, the Commissioner does not agree that compliance should be delayed as requested until July 1, 1981.

As pointed out in the NFPA petition, the September 22, 1978, publication of the special dietary foods labeling regulation was the culmination of over 15 years of rulemaking. The labeling requirements promulgated had been the subject of a public hearing and a tentative final order. The publication of the final order resolved those questions and comments raised by the publication of the tentative final order. In the Commissioner's opinion, all interested parties have had adequate time to be heard, and, with the publication of the final order, the regulations should be implemented as soon as it is practical to do so.

The Commissioner believes it is not in the best interest of consumers to delay the required labeling of these special dietary foods any longer than is necessary to allow adequate time for the purchase of new labels and sale of any currently labeled foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403 (a) and (j), 701 (a) and (e), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055, 70 Stat. 919 as amended (21 U.S.C. 321(n), 343 (a) and (j), 371 (a) and (e))), and under authority delegated to the Commissioner (21 CFR 5.1), the effective date for compliance with the regulations set forth in 21 CFR 105.66 and 105.67 in the FEDERAL REGISTER of September 22, 1978 (43 FR 43248) is hereby extended from July 1, 1979, to July 1, 1980, at which time all products initially introduced into interstate commerce shall comply.

Dated: December 21, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-36220 Filed 12-28-78; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Sulfisoxazole Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect a previously approved new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for safe and effective use of sufisoxazole tablets as an antibacterial in dogs and cats. The product was the subject of an evaluation by the National Academy of Sciences—National Research Council, Drug Efficacy Study Group (NAS/NRC). The application was subsequently supplemented in accordance with the conclusions of the NAS/NRC evaluation.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, is sponsor of an NADA (7-981V), which was originally approved

May 7, 1951. The product was the subject of an NAS/NRC evaluation published in the FEDERAL REGISTER of February 19, 1969 (34 FR 2366).

The NAS/NRC concluded that: (1) These products are probably effective in the treatment of bacterial infections caused by organisms sensitive to sulfisoxazole; (2) label changes are needed to properly qualify each disease claim as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)"; if the disease cannot be so qualified, the claim must be dropped; (3) frequency of administration is inadequate; and (4) data should be provided to show that the tablets will disintegrate in the gastro-intestinal tract of the medicated species to provide the recommended therapeutic dose.

The Food and Drug Administration concurred with the conclusions of the NAS/NRC evaluation.

Fort Dodge Laboratories responded by submitting a supplemental application which provided revised labeling and bioavailability data in accordance with the conclusions of the NAS/NRC evaluation. Accordingly, the application has been upgraded from probably effective to effective status.

For similar products having the same conditions of use, applications need not include efficacy data as specified by §§ 514.1(b)(8)(ii) or 514.111(a)(5)(vi) of the animal drug regulations (21 CFR 514.1(b)(8)(ii) or 514.111(a)(5)(vi)), but approval may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs, on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

This action, reflecting an approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Since the NADA was approved before July 1, 1975, a summary of safety and effectiveness data and information submitted in accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) to support this approval is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2330, to read as follows:

§ 520.2330 **Sulfisoxazole tablets.**

(a) *Specifications.* Each tablet contains 260 milligrams (4 grains) of sulfisoxazole.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer one tablet orally per 4 pounds of body weight.[1]

(2) *Indications for use.* Use in dogs and cats as an aid in treatment of bacterial pneumonia and bacterial enteritis when caused by organisms sensitive to sulfisoxazole.[1]

(3) *Limitations.* Repeat dosage at 24-hour intervals until 2 to 3 days after disappearance of clinical symptoms. (Administration of one-half daily dosage at 12-hour intervals or one-third daily dosage at 8-hour intervals will provide a more constant blood level.) Provide adequate supply of drinking water. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian.[1]

Effective date. This regulation is effective December 29, 1978.

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

Dated: December 13, 1978,

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

[FR Doc. 78-36221 Filed 12-28-78; 8:45 am]

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

[4110-03-M]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Levamisole Phosphate Injection

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co. for Cyanamid Agricultrual de Puerto Rico, Inc., providing for subcutaneous use of a 13.65 percent levamisole phosphate injection for the treatment of *Trichostrongylus axei* infections in cattle in addition to other approved anthelmintic uses.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTRACT:

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

SUPPLEMENTARY INFORMATION: The American Cyanamid Co. filed a supplemental new animal drug application (102-437V) for Cyanamid Agricultural de Puerto Rico, Inc., P.O. Box 243, Manati, P.R. 00701 providing for subcutaneous use of a levamisole phosphate injection containing the equivalent of 13.65 percent levamisole hydrochloride for the treatment of cattle for *T. axei* infections in addition to other approved anthelmintic uses. The drug was originally approved by publication in the FEDERAL REGISTER of May 12, 1978 (43 FR 20489). Approval of this supplement does not constitute reaffirmation of the safety of residues resulting from use of the drug.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.1244 *Levamisole phosphate injection* is amended in paragraph (c)(2)(i) by revising the phrase "stomach worms (*Haemonchus, Ostertagia*)" to read "stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*)."

Effective date. This regulation is effective December 29, 1978.

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

Dated: December 21, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-36222 Filed 12-28-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SUBCHAPTER C—MANAGEMENT AND LIQUIDATING FUNCTIONS

[Docket No. R-78-552]

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Amendments to Increase Net Worth Requirements in the Mortgage-Backed Securities Program

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final Rule.

SUMMARY: The amendments provide for increases in minimum net worth required of mortgage lenders which are issuers of GNMA Guaranteed Mortgage-Backed Securities. The change is intended to raise minimum net worth of such issuers in amounts commensurate with the amounts of securities they have outstanding.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul Yates, Government National Mortgage Association, 451 Seventh Street, S.W., Room 6224, Washington, D.C. 20410, Telephone Number: (202) 755-5550.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 23, 1978, beginning on page 27486 there was published a notice of proposed rulemaking which provided for increases in the amounts of net worth that issuers of Government National Mortgage Association guaranteed securities are required to have. All interested persons were given until July 24, 1978, to submit written comments, suggestions, or objections regarding the proposed regulations.

The following responses are provided to the comments received: Three commentators indicated that the proposed net worth requirement for issuers of project mortgage securities (§ 390.3(c)(4)(ii)) is unduly burdensome for small firms. One of these commentators expressed the belief that the requirements will adversely affect the Mortgage-Backed Securities Program by reducing competition in the issuance of project securities. GNMA has conducted an extensive analysis of the present financial status of issuers of project mortgage securities. This analysis revealed that there are 75 firms involved in the project mortgage securities program. Of these, all but ten already have net worth that meets or exceeds the new requirements. Therefore, it is believed that the new requirements will not adversely affect the extent of competition in the issuance of such securities.

One commentator expressed a belief that the term "assets acceptable to GNMA" as used in § 390.3(c) should be more fully defined. GNMA agrees that its requirements for acceptable assets should be made generally known. Therefore, details of GNMA's requirements with respect to acceptable assets have been distributed to all issuers, with a request for their views and suggestions. GNMA's requirements based on the resulting comments will be published shortly in the progam handbook, which is The Mortgage-Backed Securities Guide (Handbook GNMA 5500.1).

One commentator noted an apparent ambiguity that could lead to a conclusion that the new net worth requirements are in addition to those presently applicable. This is not the intent; rather the new requirements are a substitute for the present requirements. Because only one commentator considered the proposed wording unclear, and because a careful review of the wording indicated it to state the intended meaning clearly, no revision has been made.

One commentator indicated a belief that the new requirements should only be applicable in connection with *commitments* that are issued on and after April 1, 1979. As proposed, the new requirements would be applicable for all active securities issuers wishing to issue *securities* on and after April 1, 1979. The same commentator suggested as another approach that the new net worth requirements be made applicable with respect to commitments made after these regulations are published in final form. Another commentator proposed that the requirements not become applicable until at least one year after the date of final publication of the regulations. GNMA recognizes that there have been delays in placing the new requirements into effect, and that possibly not enough time now exists for issuers where necessary to increase their capital by April 1, 1979. Therefore, the applicable date of the new net worth requirements has been revised to October 1, 1979. Consequently, any lender wishing to issue securities on or after October 1, 1979, must satisfy the new requirements, which are computed based on securities outstanding at the time of the issuance. Also, wording has been added to make clear that, with respect to construction loan securities (and project loan securities for the same project) the applicable net worth requirement is that which is in effect as of the issue date of the first construction loan security.

Two commentators noted that the provision in section 390.3(e) that the Association shall not guarantee a security the income from which is exempt from Federal income taxes could be interpreted in such a way as to prohibit tax exempt entities from investing in GNMA guaranteed securities. The indicated provision has been deleted entirely from the final rule.

One commentator indicated a belief that the higher net worth requirements represent a unilateral amendment to existing contracts between the issuer and GNMA. This is not a correct understanding of the proposal. If an issuer issues no new securities, the prior requirements, as provided for in guaranty agreements between the issuer and GNMA, continue to be applicable.

One commentator noted that the definition of "securities outstanding" in § 390.3(d)(1) would result in a double counting of commitments to issue project securities where commitments also have been issued for construction loan securities on the same project. This result was not intended, and revisions have been made to the final regulations to make the computational procedure clear.

Two commentators stated that GNMA has not demonstrated through an analysis of the risks of loss to issuers and to GNMA that there is a need for an increase in the net worth of issuers of project securities. GNMA has, in fact, analyzed the implications of being a securities issuer and has related these implications to the need for net worth. The principal need for working capital arises for an issuer when a pooled mortgage is delinquent, and if it goes into foreclosure. During the time a loan is delinquent, the issuer must continue making payments to security holders, using its own resources, until the delinquency is cured or an insurance claim payment is received. Close analysis shows that the cash requirements for such advances can amount to five or more times the required amount of net worth, even under the new levels. If a loan is foreclosed, the issuer is responsible for covering, out of its own resources, a portion of the losses not covered by the FHA claim settlement. Such losses can approach an amount equal to issuers' net worth, even with the new levels, in some circumstances. Furthermore, GNMA wishes issuers, where appropriate, to provide forbearance in instances where there is a prospect for curing a loan delinquency and avoiding foreclosure. To provide such forbearance requires that an issuer have adequate capital. For all of these reasons, it is determined that the new levels of net worth are appropriate and are needed to assure that issuers have the ability to carry out

their responsibilities in the Mortgage-Backed Securities Program.

A new provision has been included in § 390.3(e)(2) to provide that to be an eligible issuer a lender must be in compliance with Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967.

In addition to the above changes made to the amendment as proposed, the following changes are made to the GNMA Mortgage-Backed Securities Program regulations:

Paragraph (a) of § 390.3 prescribes the basic requirements which a mortgage lender must meet in order to qualify as an "eligible issuer" of mortgage-backed securities guaranteed by GNMA. In order to so qualify, a mortgage lender must—

1. Be in good standing as a mortgagee approved by the FHA;

2. Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities as determined by GNMA;

3. Be in good standing as a FNMA or GNMA approved mortgage servicer;

4. Maintain the applicable minimum net worth prescribed by paragraph (c) of revised § 390.3; and

5. Meet the requirements, conditions, and limitations prescribed by GNMA in § 390.3 or in the Mortgage-Backed Securities Guide (GNMA 5500.1).

Paragraph (b) of § 390.3 makes it clear that GNMA will not make a commitment to guarantee mortgage-backed securities, or guarantee any securities, if the mortgage lender requesting the commitment or guaranty does not then qualify as an eligible issuer. This is an expansion of language presently found in § 390.3(a), which provides the GNMA will not guarantee any securities unless the issuer meets the prescribed net worth requirements.

Paragraph (c) of § 390.3 contains the revised net worth requirements for issuers of the various categories of mortgage-backed securities. The present provision deals with four such categories: Straight pass-through securities, modified pass-through securities backed by mortgages on the one- to four-family residences, modified pass-through securities backed by mobile home mortgages, and other modified pass-through securities. The new paragraph (c) replaces the category of "other modified pass-through securities" with two new categories: (1) Modified pass-through securities backed by mortgages on multifamily projects; and (2) issuance of more than one type of security.

The net worth requirement for issuance of straight pass-through securities, $100,000, is unchanged (paragraph (c)(1)). However, no further applications for straight pass-through securities will be accepted.

The net worth requirement for issuance of modified pass-through securities backed by home mortgages (paragraph (c)(2)) is increased with respect to securities issued on or after October 1, 1979. The present provision has a limit of $250,000 on the net worth requirement. The new provision has no such limit, and it has a minimum requirement of $100,000. For issuers with more than $20 million of securities outstanding, the new requirement is $250,000, plus 0.2 percent of securities outstanding in excess of $20 million.

The net worth requirement for issuance of modified mobile home pass-through securities on or after October 1, 1979, is increased for large-volume issuers (paragraph (c)(3)). There is presently a $500,000 net worth requirement for all issuers of this type of security. The new requirement is $500,000, plus 0.2 percent of securities outstanding in excess of $35 million (as adjusted based on the rule, described below, for internal reserve pools).

The net worth requirement for issuance of modified multifamily project pass-through securities on or after October 1, 1979, is similarly increased for large-volume issuers (paragraph (c)(4)). Under the present regulations, the $500,000 limit for issuance of "other" securities is applicable to this category. The same formula is retained for multifamily project securities issued prior to October 1, 1979. For securities issued on or after that date, there is no $500,000 limit, and an issuer with securities outstanding in excess of $35 million needs a net worth of $500,000, plus 0.2 percent of securities outstanding in excess of $35 million.

The net worth requirement for issuance of more than one type of security on or after October 1, 1979 (paragraph (c)(5)) is $500,000, plus 0.2 percent of securities outstanding in excess of $35 million.

Paragraph (d) provides that, in calculating required net worth, any securities outstanding that are based on internal reserve pools will be reduced by one-half in the making of such calculations. It also provides that the term "securities outstanding" means the sum of the unpaid principal balances outstanding, plus commitments outstanding, plus additional commitments requested.

Paragraph (e) requires eligible issuers to comply with fair housing laws. This paragraph contains language presently found in paragraph (b) of § 390.3.

Paragraph (f) requires each eligible issuer to conduct its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by GNMA.

Paragraph (g) permits GNMA to withhold the issuance of further commitments to issuers that fail to meet GNMA issuer eligibility requirements.

Section 390.5, governing issuance of mortgage-backed securities, is amended by deleting the provision now contained in paragraph (e) of that section. This provision now requires the issuer to report to GNMA certain information as to the cost of acquisition of pooled mortgages. The amendment eliminates such reports and the need for Form HUD 1713.

Section 390.7, setting forth the requirements for mortgages that may be included in pools backing GNMA-guaranteed securities, is amended by revising paragraph (b). The present language excludes from a pool mortgages which have been insured or guaranteed longer than 12 months prior to the date of the GNMA commitment to guarantee the securities to be backed by such pool. The new language measures the age of the mortgages by the first scheduled monthly payment of principal and interest or the date of purchase at a GNMA-approved auction. This amendment, first, eliminates the need for the date of FHA insurance of VA or FmHA guaranty to be reported on Form HUD 1706 and, second, permits Government-held mortgages over a year old to be put in mortgage-backed securities pools if purchased by the issuer at a GNMA-approved auction.

Section 390.11, which now requires either maintenance of "excess collateral" or the furnishing of a fidelity bond by issuers of mortgage-backed securities, is amended by deleting the "excess collateral" option. Under the revised language, all issuers are required to maintain fidelity bond coverage acceptable to GNMA.

Finally, § 390.13, governing GNMA guarantees of mortgage-backed securities, is amended by revising the last sentence of the section to delete the present provision for GNMA to make claim against an issuer's "excess collateral" in the event of default.

A finding of inapplicability of § 102(2)(c) of the National Environmental Policy Act of 1969 has been made pursuant to HUD Handbook 1390.1. A copy of the finding is available for public inspection in the Office of the Rules Docket Clerk, Room 5218, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, the GNMA Mortgage-Backed Securities Program regulations are amended as follows:

AMENDMENTS TO GNMA MBS REGULATIONS

1. Section 390.3 is amended by revising it to read as follows:

§ 390.3 Eligible issuers of securities.

(a) A mortgage lender, including an instrumentality of a State or local government, shall be eligible to issue and service mortgage-backed securities guaranteed by the Association if such mortgage lender qualifies as an eligible issuer. In order to qualify as an eligible issuer, a mortgage lender must—

(1) Be in good standing as a mortgagee approved by the Federal Housing Administration;

(2) Be in good standing as a mortgage servicer approved by the Federal National Mortgage Association (FNMA) or the Association;

(3) Have adequate experience, management capability, and facilities to issue and service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth prescribed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this section or in the Association's Mortgage-Backed Securities Guide (GNMA 5500.1).

(b) The Association shall not make a commitment to guarantee, or guarantee (pursuant to a commitment or otherwise) any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty then qualifies as an eligible issuer.

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to GNMA of not less than the applicable minimum amount set forth in this paragraph, as follows:

(1) For the issuance of straight pass-through securities, $100,000;

(2) For the issuance of modified pass-through securities based on and backed by mortgages on one-to-four family residences—

(i) With respect to securities issued or to be issued prior to October 1, 1979, an amount equal to the lesser of:

(*a*) $250,000; or

(*b*) $100,000, plus 1 percent of securities outstanding in excess of $5 million.

(ii) With respect to securities issued or to be issued on or after October 1, 1979, an amount equal to the sum of:

(*a*) $100,000; plus

(*b*) 1 percent of securities outstanding in excess of $5 million but not in excess of $20 million; plus

(*c*) 0.2 percent of securities outstanding in excess of $20 million;

(3) For the issuance of modified pass-through securities based on and backed by mortgages on mobile homes—

(i) With respect to securities issued or to be issued prior to October 1, 1979, $500,000.

(ii) With respect to securities issued or to be issued on or after October 1, 1979, an amount equal to the sum of:

(*a*) $500,000; plus

(*b*) 0.2 percent of securities outstanding in excess of $35 million;

(4) For the issuance of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and permanent mortgages)—

(i) With respect to securities for which the first issue within any pool or project is issued or to be issued prior to October 1, 1979, an amount equal to the lesser of:

(*a*) $500,000; or

(*b*) The sum of 3 percent of the first $5 million of securities outstanding, plus 2 percent of the next $5 million of securities outstanding, plus 1 percent of securities outstanding in excess of $10 million, but in no event shall such net worth be less than $100,000.

(ii) With respect to securities for which the first issue within any pool or project is issued or to be issued on or after October 1, 1979, an amount equal to the sum of:

(*a*) $500,000; plus

(*b*) 0.2 percent of securities outstanding in excess of $35 million;

(5) For the issuance of more than one type of security on or after October 1, 1979, an amount equal to the sum of:

(*a*) $500,000; plus

(*b*) 0.2 percent of all mortgage-backed securities outstanding in excess of $35 million.

(d)(1) In computing the required amount of net worth for purposes of this section, the term "securities outstanding" means the sum of:

(i) The unpaid principal balances of securities currently in the name of the issuer; plus

(ii) The amount of any outstanding commitments for guaranty issued by the Association, excluding the amount of project security commitments outstanding in cases where there are any construction security commitments outstanding for the same project; plus

(iii) The amount of any commitments to guaranty currently being requested from the Association, excluding the amount of project security commitments requested in cases where construction security commitments are being requested for the same project.

(2) In calculating required net worth, any securities outstanding that are based on internal reserve pools will be reduced by one-half in the making of such calculations.

(e) A mortgage lender shall not qualify as an eligible issuer at any time in which—

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under Title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; or Title VII of the Civil Rights Act of 1968; or issued by the FHA or VA.

(f) A mortgage lender shall qualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and shall maintain its books and records in accordance with generally accepted accounting principles.

(g) In the event that a mortgage lender which has qualified as an eligible issuer should subsequently fail to comply with any of the requirements prescribed in this section, the Association may withhold further commitments to guarantee securities until such time as the Association is satisfied that the mortgage lender has resumed business operations in compliance with such requirements.

(h) If any issuer, subsequent to the issuance of securities guaranteed by the Association, should fail in a material way to be in compliance with any of the requirements prescribed in this section or of the guaranty agreement, the Association may bring proceedings to default such issuer, in accordance with the following procedure: The Association shall serve the issuer, by hand delivery or by certified or registered mail, with a written notice stating the facts incident to such failure and setting forth such affirmative requirements as the Association may consider necessary to correct such failure to be in compliance. Steps to correct or otherwise remedy such failure shall be carried out in accordance with such procedures as may be set forth in the guaranty agreement.

§ 390.5 [Amended]

2. Section 390.5 is amended by deleting therefrom existing paragraph (e).

3. Section 390.7 is amended by revising paragraph (b) thereof to read as follows:

§ 390.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which:

* * * * *

(b) Have a date for the first scheduled monthly payment of principal and interest, or date of purchase from

an Association-approved auction, that is no more than 12 months prior to the date on which the Association makes its commitment to guarantee the issue of securities;

4. Section 390.11 is amended by revising it to read as follows:

§ 390.11 Fidelity bond coverage.

The issuer shall maintain, for the benefit of the Association, fidelity bond coverage, acceptable to the Association, that assures the faithful performance of the fiduciary responsibilities of the issuer.

5. Section 390.13 is amended by revising it to read as follows:

§ 390.13 Guaranty.

(a) With respect to straight pass-through securities, the Association guarantees the timely payment to the security holder of the proceeds of principal and interest, as collected, as undertaken in the Association's guaranty appearing on the face of the security. With respect to modified pass-through securities, the Association guarantees the timely payment, whether or not collected, of the fixed rate of interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. As to straight pass-through securities, any failure or inability of the issuer to make payment as due to the holders of the securities from the proceeds from the pool of mortgages which have been collected, or because of failure to make collections under reasonable and accepted standards of mortgage servicing, shall constitute a default of the issuer. As to modified pass-through securities, any failure or inability of the issuer to make fixed or other payments as due as well as such other failures as may be identified by the Association and included in the guaranty agreement, shall be deemed such a default.

(b) Upon any default by the issuer and payment under its guaranty by the Association, or any failure of the issuer to comply with the terms of the guaranty agreement, the Association may institute a claim against the issuer's fidelity bond, or may, pursuant to Section 306(g) of the National Housing Act, extinguish all the right, title, or other interest of the issuer in the pooled mortgages, by letter directed to the issuer and making the mortgages the absolute property of the Association, subject only to unsatisfied rights therein of the holders of the securities, or the Association may do both.

(Sec. 7(d), Department of Housing and Urban Development Act; (42 U.S.C. 3535(d)).)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 26, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 78-36276 Filed 12-28-78; 8:45 am]

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 231—COLORADO RIVER IRRIGATION PROJECT, ARIZONA

Final Revision of Rates and Procedures

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final Revision of Rates and Procedures.

SUMMARY: The purpose of the final revision is to increase the four power rate schedules (§ 231.51 Rate Schedule No. 1—Residential Rate, § 231.52 Rate Schedule No. 2—Commercial Rate, § 231.53 Rate Schedule No. 3—Irrigation Pumping Rate, and § 231.54 Rate Schedule No. 4—Street and Area Lighting), and to modify the procedure for adjusting power rates.

A rate increase is necessary because the Arizona Public Service Company, a power supplier of the Colorado River Irrigation Project, has increased the cost of wholesale power by 33.5 percent. The increased cost, when averaged with power purchased from the Department of Energy, will be 9 percent. A study has determined that the various classes of customers within the Project contribute revenue in proportion to the cost of serving them; therefore, an approximate 9 percent general increase is proposed to the existing rates. This increase is the minimum required to offset the additional cost of power purchased from Arizona Public Service Company.

The Project purchases its power and energy from the Department of Energy and Arizona Public Service Company. The cost of the power and energy purchased from these entities is subject to change; consequently, the Project power rates in most instances must be adjusted to offset these changes. The present procedure for adjusting Project power rates is through the rulemaking process which is somewhat time consuming. The time delays associated with the rulemaking process have prevented the Project from adjusting its power rates in a timely manner, thus causing economic instability in the operation and maintenance of the power system. A provision (§ 231.55) has been added to Part 231 of the CFR which will provide for the Area Director to automatically adjust Project power rates through unilateral action in order to avoid delays associated with the rulemaking process. Rates adjustments due to increased costs of labor, materials and equipment will continue to be initiated through the rulemaking process.

DATE: These revisions shall become effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona 85011, telephone number 602-261-4184.

SUPPLEMENTARY INFORMATION: Beginning on Page 51806 of the November 7, 1978, FEDERAL REGISTER, Vol. 43, No. 216, there was published a proposed revision of rates and procedures. All interested persons were given until November 27, 1978, to submit comments regarding the proposed revision. No written comments were received; however, a public meeting was held in the Blake School Cafeteria, Parker, Arizona, November 21, 1978, to discuss the proposed rate increase and to answer any questions from concerned individuals. The comments from the public were generally complaints about the high cost of power and the financial impact this would have on their business. Questions asked related to the definition of demand charge and if these charges could be printed on the bills. All comments heard have been considered and it has been determined that the additional cost of purchased power can only be offset by increasing the rates as proposed. The principal author of this document is Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona 85011, telephone number 602-261-4184.

(Sec. 3.1, 10 BIAM; Section 2, 49 Stat. 1039; 54 Stat. 422; (5 U.S.C. 301).)

Accordingly, Title 25 CFR Part 231 is amended as follows:

1. Section 231.51 is revised to read as follows:

§ 231.51 Rate Schedule No. 1—Residential.

(a) *Application of Schedule.* This schedule applies to electrical service required for residential purposes in individual private dwellings and in individually metered apartments delivered

through one meter to a customer at one premise either urban or rural, for domestic use only. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of Service.* Single phase, 60 cycle, 120/240 volts.

(c) *Monthly Rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.2 cents per kilowatt-hour for the next 300 kilowatt-hours.

(3) 4.4 cents per kilowatt-hour for the next 800 kilowatt-hours.

(4) 3.3 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $.0001) paid by the Project to the Project's power supplier.

2. Section 231.52 is revised to read as follows:

§ 231.52 Rate Schedule No. 2—Commercial Rate.

(a) *Application of Schedule.* This schedule applies to electrical service required by commercial, industrial and off-reservation irrigation pumping for all uses when such service is supplied at one point of delivery and measured through one meter. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle, at one standard voltage (120/240, 120/208, 270/480, or 480 volts).

(c) *Monthly Rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.1 cents per kilowatt-hour for the next 900 kilowatt-hours.

(3) 4.1 cents per kilowatt-hour for the next 4000 kilowatt-hours.

(4) 3.1 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Demand Charge.* (1) None for the first 5 kilowatts.

(2) $2.77 per kilowatt for all billing demand over 5 kilowatts.

(e) *Minimum Charge.* (1) $8.50 or $2.77 per kilowatt of billing demand for billing demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the Officer in Charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve (12) times the highest monthly minimum computed for the same 12-month period.

(f) *Billing Demand.* The highest 15-minute integrated demand in kilowatts occurring during the month or the demand specified in a contract, whichever is greater.

(g) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $.0001) paid by the Project to the Project's power suppliers.

3. Section 231.53 is revised to read as follows:

§ 231.53 Rate Schedule No. 3—Irrigation Pumping Rate.

(a) *Application of Schedule.* This schedule applies to electrical service required for pumping of irrigation water for irrigation systems located on the reservation, when such service is supplied at one point of delivery and consumption is measured through one meter and is approved by the Officer in Charge. Use must be limited to the customer's premises and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle at one standard voltage (120/240, 120/208, 270/480 or 480 volts).

(c) *Monthly Rate.* (1) Energy Charge 1.9 cents per kilowatt-hour.

(2) Demand Charge $1.65 per kilowatt of billing demand.

(3) Minimum Charge $1.65 per kilowatt of billing demand.

4. Section 231.54 is revised to read as follows:

§ 231.54 Rate Schedule No. 4-Street and Area Lighting.

(a) *Application of Schedule.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots and similar areas where dusk-to-dawn service is desired. The Project will own, operate and maintain the lighting system including normal lamp and globe replacement.

(b) *Monthly Rate.*

Lamps	Per Lamp	
	Metered	Unmetered
(1) 175 watts, mercury vapor (approx. 6,500 lumens).....	$5.55	$6.65
(2) 250 watts, mercury vapor (approx. 10,000 lumens).....	7.00	8.50
(3) 400 watts, mercury vapor (approx. 18,000 lumens).....	9.50	12.10

(c) *Minimum Term of Service.* The minimum term of service will be twelve months, payable in advance. This advance payment may be waived by the Officer in Charge.

(d) *Installation Charge.* The customer will be required to pay the total installation costs including labor and materials as determined by the Officer in Charge. Ownership of all facilities will remain with the Project including lamp and globe replacement.

5. By adding § 231.55 to read as follows:

§ 231.55 Adjustments due to Purchased Power Cost Changes.

The rate schedules given in §§ 231.51, 231.52, 231.53 and 231.54 shall be adjusted as necessary and appropriate to offset changes in costs of power and energy purchased from the power supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the Area Director; however, when a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed action have been carefully evaluated in accordance with the Executive Order 11821.

HAROLD D. ROBERSON,
Acting Assistant Area Director.

[FR Doc. 78-36278 Filed 12-28-78; 8:45 am]

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1613—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulation.

SUMMARY: The Equal Employment Opportunity Commission has adopted certain of the current regulations of the Civil Service Commission at 5 CFR Part 713 with respect to equal employment opportunity in the federal government and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. In addition, certain technical changes have been made in the regulations in order to reflect the transfer of authority with respect to federal EEO from the Civil Service Commission to the Equal Employment Opportunity Commission. The regulations have also been amended to conform to the 1978 amendments to the Age Discrimination in Employment Act (Pub. L. 95-256).

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Barry Strejcek, Office of Field Services, Equal Employment Opportuni-

ty Commission, 2401 E Street, NW., Washington, D.C. 20506, (tel.) 202-634-6855.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, all equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (b) and (c), will be transferred to the Equal Employment Opportunity Commission. Effective January 1, 1979, with respect to Federal employment of handicapped individuals, all enforcement and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, will also be transferred to the Equal Employment Opportunity Commission and all functions relating to the administration and enforcement of the Equal Pay and Age Discrimination in Employment Acts vested in the Civil Service Commission under the Fair Labor Standards Act, as amended, 29 U.S.C. 204 *et seq.*, the Portal-to-Portal Act of 1947 as amended, 29 U.S.C. 259 and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, will be transferred to the Equal Employment Opportunity Commission.

Accordingly, the EEOC has voted to continue in effect on January 1, 1979 and until further notice the following sections of the current regulations of the Civil Service Commission with respect to federal equal employment opportunity:

5 CFR 713.201 thru 713.235 (1978)
5 CFR 713.241 thru 713.262 (1978)
5 CFR 713.271 (as amended, November 14, 1978, at 43 FR 52694)
5 CFR 713.281 thru 713.302 (1978)
5 CFR 713.501 thru 713.643 (1978) (except as noted below)
5 CFR 713.701 thru 713.710 (March 24, 1978, 43 FR 12293)

The above-cited regulations will be codified at 29 CFR 1613.201 *et seq.*, effective January 1, 1979. The numbering of the *sections* will be preserved. All references to the "Commission" will be to the Equal Employment Opportunity Commission. The "Office of Appeals and Review" is substituted for all present references to the "Appeals Review Board."

To reflect the transfer of function § 713.232 has been amended (new § 1613.232) as follows:

§ 1613.232 Where to appeal.

The complainant shall file his appeal in writing, either personally or by mail, with the Director, Office of Appeals and Review, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20056.

In addition, the EEOC has voted to continue in effect the substance of the following Federal Personnel Manual (FPM) Letters and Bulletins with respect to federal equal employment opportunity:

FPM Letter 713-19
FPM Letter 713-21
FPM Letter 713-30
FPM Letter 713-40
FPM Letter 713-32
FPM Letter 713-36
FPM Letter 713-38
FPM Letter 713-42
FPM Letter 713-44
FPM Letter 551-9
CSC Bulletin 713-50
CSC Bulletin 713-43

These regulations and the FPM sections dealing with the complaint process will be applicable to the processing of all EEO Complaints except those raising an issue which is appealable to the Merit Systems Protection Board. Regulations relating to complaints involving both allegations of discrimination and issues appealable to the MSPB will be announced at a later date.

In addition, effective September 30, 1978, the Age Discrimination in Employment Act of 1967, as amended, was further amended to remove the upper age limit for protection for federal employees under the Act (the age limit had been age 70 for employees and age 65 for applicants).

Accordingly, in order to conform the regulations to the Age Discrimination in Employment Act Amendments of 1978 (Pub. L. 95-256), §§ 713.501(b)(4), 713.512, and 713.601(d) (new §§ 1613.501(b)(4), 1613.512, and 1613.601(d)) are revised as follow:

§ 1613.501 [Amended]

* * * * *

(b) * * * (4) This subpart applies to employees and applicants for employment who are at least 40 years of age.

§ 1613.512 Coverage.

The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with the agency who believes that he or she has been discriminated against on account of age and who, at the time of the action complained of, was an employee or applicant for employment at least 40 years of age. A complaint may also be filed by an organization for the person with his or her consent.

§ 1613.601 [Amended]

* * * * *

(d) "Age" is an inclusive term which means the age of at least 40 years.

Interested persons should also refer to the Notices section in today's FEDERAL REGISTER for the offices and addresses at the Equal Employment Opportunity Commission designated to receive particular documents required by the regulations.

Signed this fifteenth day of December, 1978.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

The U.S. Civil Service Commission has no objection to the transfer of authority reflected herein.

ALAN K. CAMPBELL,
Chairman.

[FR Doc. 78-36273 Filed 12-28-78; 8:45 am]

[7630-01-M]

Title 36—Parks, Forests and Public Property

CHAPTER IX — PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

PART 905—STANDARDS OF CONDUCT

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Final Rule.

SUMMARY: On October 19, 1978, the Pennsylvania Avenue Development Corporation published at 43 FR 48633 an interim rule establishing Standards of Conduct governing the conduct of its employees and special government employees. Interested parties were given an opportunity to comment on the rule and to submit their comments by November 7, 1978. The interim rule was approved by the Board of Directors of the Corporation at its meeting of September 20, 1978. No written comments were received on the interim rule. An oral comment was received.

After reviewing the interim rule as published, several editorial changes have been made in this final rule. These changes include the capitalization of certain letters, correction of misspellings, and correction of the Corporation's mailing address by the addition of its suite number.

A single substantive change has been made in the text as a result of the comment received. The definition of "employee," appearing in § 905.735-103(f), has been modified to reflect that a determination must be made as to whether certain Board Members are officers of employees or other governmental entities. If a Board Member is considered an officer or an employee by that entity, then the Member will be treated as such by the Corporation under this Part.

DATE: Effective date of final rule: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

David W. Briggs, Attorney, Office of the General Counsel [(202) 566-1078], Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C., 20004.

Dated: December 19, 1978.

JOSEPH B. DANZANSKY,
Chairman.

Accordingly, 36 CFR is amended by adding Part 905 to read as follows:

PART 905—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.
905.735-101 Principles and purpose.
905.735-102 Adoption of regulations.
905.735-103 Definitions.
905.735-104 Applicability.
905.735-105 Designation of counselor.
905.735-106 Notification to employees and special Government employees.
905.735-107 Review of statements of employment and financial interests.
905.735-108 Remedial and disciplinary action.

Subpart B—Conduct and Responsibilities of Employees

905.735-201 General standards of conduct.
905.735-202 Gifts, entertainment, and favors.
905.735-203 Outside employment and other activity.
905.735-204 Disclosure of information.
905.735-205 Purchase of Government-owned property.

Subpart C—Conduct and Responsibilities of Special Government Employees

905.735-301 General standards of conduct.

Subpart D—Special Standards Applicable to Certain Board Members

905.735-401 Standards.
905.735-402 Advice and determination.

Subpart E—Statements of Employment and Financial Interests

905.735-501 Form and content of statements.
905.735-502 Statements of employment and financial interests by employees.
905.735-503 Statements of employment and financial interests by special Government employees.
905.735-504 Procedures for obtaining statements.
905.735-505 Confidentiality of statements.

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735; section 6(5), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875).

Subpart A—General Provisions

§ 905.735-101 Principles and purpose.

In order to assure that the business of the Pennsylvania Avenue Development Corporation is conducted effectively, objectively, and without improper influence or appearance thereof, all employees and special Government employees must observe unquestionable standards of integrity and conduct. Employees and special Government employees shall not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct or other conduct prejudicial to the Government. All employees and special Government employees must avoid conflicts of private interest with their public duties and responsibilities. They must consider the propriety of any action in relation to general ethical standards of the highest order, so that public confidence in the integrity of the Government will not be impaired. Certain standards are set by law. Others are set by regulation and by policy. This part incorporates by reference applicable general standards of conduct and prescribes additional necessary elements. Taken together, this part constitutes the Corporation's regulations on this subject. Failure to observe any of the regulations in this part is cause for remedial action.

§ 905.735-102 Adoption of regulations.

Under the authority of 5 CFR 735.104(f), the Corporation adopts the following sections of the Civil Service Commission regulations on "Employee Responsibilities and Conduct" found in Part 735 of Title 5, Code of Federal Regulations: § 735.202(a), (d), (e), (f) through 735.210; 735.302; 735.303(a); 735.304; 735.305(a); 735.306; 735.404 through 735.411; and, 735.412(b) and (d). These sections are incorporated by reference in this part and are modified and supplemented as set forth herein.

§ 905.735-103 Definitions.

As used in this part:

(a) "Board Member" means any member of the Board of Directors of the Pennsylvania Avenue Development Corporation, appointed or serving under section 3, Pub. L. 92-578, 86 Stat. 1267 (40 U.S.C. 872).

(b) "Chairman" means the Chairman of the Board of Directors and President of the Corporation.

(c) "Conflict" means the subordination of public responsibilities to private interests, and includes the appearance of such subordination.

(d) "Consultant" means an individual who serves as an advisor to an officer or division of the Corporation, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions presented him by the Corporation, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may lie in his possession of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency. (Chapter 304, Federal Personnel Manual).

(e) "Corporation" means the Pennsylvania Avenue Development Corporation, created by the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, 86 Stat. 1266 (40 U.S.C. 871).

(f) "Employee" means an officer or employee of the Corporation, but does not include a special Government employee as defined herein. The term includes those Board Members who are determined to be officers or employees of the executive or legislative branches of the United States or of the District of Columbia. The term does not include elected officials.

(g) "Executive Order" means Executive Order 11222 of May 8, 1965.

(h) "Expert" means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent individuals in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity. (Chapter 304, Federal Personnel Manual.)

(i) "Head of the agency" means the Chairman.

(j) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other institution or organization.

(k) "Special Government Employee" means an officer or employee of the Corporation who is retained, designated, appointed or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202(a)). The term includes those Board Members who are appointed from private life and required to file a statement of financial interests with the Chairman of the Civil Service Commission pursuant to Part IV of the Executive Order, or who are determined to be special government employees of the executive or

legislative branches of the United States or the District of Columbia.

§ 905.735–104 Applicability.

This part applies to each employee and to each special Government employee of the Corporation as defined herein and supplements the Executive Order and Part 735 of Title 5, Code of Federal Regulations, promulgated by the Civil Service Commission on employee responsibilities and conduct.

§ 905.735–105 Designation of counselor.

In accordance with 5 CFR 735.105(a), the General Counsel of the Corporation is designated to be Ethics Counselor and shall serve as the Corporation's liaison with the Civil Service Commission for matters covered in this part.

§ 905.735–106 Notification to employees and special Government employees.

(a) At the time these regulations are published, or amended, and not less often than once annually thereafter, the Corporation shall furnish each employee and special Government employees with a copy of the regulations. The Administrative Officer shall insure that each newly hired employee and special Government employee is given a copy of these regulations prior to or at the time of entry on duty.

(b) All employees and special Government employees will be advised by the Corporation of the availability of counseling regarding the provisions of this part.

§ 905.735–107 Review of statements of employment and financial interests.

The Ethics Counselor of the Corporation shall review each statement of employment and financial interests submitted under §§ 905.735-402 or 905.735-403, except his own and those statements of special Government employees who file with the Chairman of the Civil Service Commission. When review discloses a conflict between the interests of an employee or special Government employee of the Corporation and the performance of his services for the Corporation, the Ethics Counselor shall bring the conflict to the attention of the employee or special Government employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict cannot be resolved, the Ethics Counselor shall forward a written report on the conflict to the Chairman, recommending appropriate action. The Chairman shall review the report, solicit an explanation from the individual, and seek resolution of the conflict.

§ 905.735–108 Remedial and disciplinary action.

(a) In addition to any penalties prescribed by law, the Chairman, after review and consideration of any explanation given by an employee or special Government employee concerning a conflict of interest, may institute appropriate remedial action to resolve or otherwise eliminate the conflict. Appropriate remedial action may include, but is not limited to:

(1) Divestment by the employee or the special Government employee of the conflicting interest;

(2) Disqualification of the individual from a particular assignment;

(3) Changes in the assigned duties of the individual; or

(4) Disciplinary action.

(b) Where the situation warrants some form of disciplinary action, the Chairman may choose from a wide range including a warning or reprimand, suspension, reduction in grade or pay, or termination of employment. The disciplinary action selected should reflect the character and degree of the offense which demands such action and should be reasonable in light of that offense.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive Orders, and regulations.

Subpart B—Conduct and Responsibilities of Employees

§ 905.735–201 General standards of conduct.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Corporation. Courtesy, consideration, and promptness are to be observed in dealing with the public, Congress, and other governmental agencies.

(b) All employees shall conduct themselves off the job so as not to reflect adversely upon the Corporation or the Federal service.

(c) Employee conduct shall exemplify the highest standards of integrity. Employees shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 905.735–202 Gifts, entertainment, and favors.

Pursuant to paragraph (b) of 5 CFR 735.202, the following exceptions to the restriction of paragraph (a) of that section are authorized. Employees may:

(a) Accept gifts and other things of value under circumstances which arise from an obvious family or personal relationship(s) (such as between the parents, children, or spouse of the employee and the employee), when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(b) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting, or on an inspection tour where an employee may properly be in attendance;

(c) Accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home purchase;

(d) Accept unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value;

(e) Participating without payment in privately funded activities in the Washington metropolitan area if: (1) An invitation is addressed to the Chairman or Executive Director of the Corporation and approved by either of them; (2) no provision for individual payment is readily available; and (3) the activities are limited to ceremonies of interest to both the local community and the Corporation (such as ground breakings or openings), or are sponsored or encouraged by the Federal or District Government as a matter of policy; and,

(f) Participate in widely attended lunches, dinners, and similar gatherings sponsored by industrial, commercial, technical and professional associations, or groups, for discussion of matters of interest both to the Corporation and the public. Participation by an employee at the host's expense is appropriate if the host is an association or group and not an individual.

§ 905.735–203 Outside employment and other activity.

As provided in 5 CFR 735.203, an employee of the Corporation may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who proposes to engage in outside employment shall report that fact in writing to his supervisor prior to undertaking such employment.

§ 905.735–204 Disclosure of information.

(a) Every employee who is involved in the development, maintenance or use of Corporation records containing information about individuals shall familiarize himself with the requirements and penalties of the Privacy Act of 1974 (5 U.S.C. 552a) and Corporation regulations (36 CFR Part 903) promulgated thereunder concerning the utilization of and access to such records.

(b) Every employee is directed to cooperate to the fullest extent possible in discharging the requirement of the Freedom of Information Act (5 U.S.C. 522) and Corporation regulations promulgated thereunder (36 CFR Part 902). Every effort should be made to furnish service with reasonable promptness to persons who seek access to Corporation records and information.

§ 905.735–205 Purchase of Government-owned property.

Employees of the Corporation and members of their immediate families may purchase Government-owned personal property when it is offered for sale by the General Services Administration or any Federal agency other than the Corporation (41 CFR 101–45.302).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 905.735–301 General standards of conduct.

(a) Special Government employees of the Corporation shall adhere to applicable regulations adopted under § 904.735–102, except 5 CFR 735.203(b). In addition, the standards of conduct set forth in §§ 905.735–201, 204, and 205 shall apply to special Government employees.

(b) Special Government employees of the Corporation may teach, lecture, or write consistent with the provisions of 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the provisions concerning gifts, entertainment, and favors set forth in § 905.735–202 are hereby made applicable to special Government employees.

Subpart D—Special Standards Applicable to Certain Board Members

§ 905.735–401 Standards.

Section 3(c)(8) of the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92–578, 86 Stat. 1267 (40 U.S.C. 872(c)(8)) specifies that the eight members appointed to the Board by the President from private life, at least four of whom shall be residents of the District of Columbia, "shall have knowledge and experience in one or more fields of history, architecture, city planning, retailing, real estate, construction or government." As a result of these prerequisites for appointment of a private member to the Board of Directors, conflicts could arise for these Board Members as the Corporation proceeds with various development activities. Accordingly, Board Members should perform their responsibilities for the operation and management of the Corporation consistent with these regulations, and other applicable Federal laws and regulations, and consistent with the highest level of fiduciary responsibility.

§ 905.735–402 Advice and determination.

The Corporation's Ethics Counselor is readily available for consultation when a Board Member seeks advice as to the appropriateness of his actions in light of this part, the Executive Order, or Title 18, United States Code, Chapter 11. A Board Member has an affirmative duty to advise the Ethics Counselor of any potential conflict of interest which may arise with the individual's participation in any particular matter before the Corporation. If advised to do so, the Board Member should submit to the Chairman for determination the question of whether or not the conflict will disqualify the Board Member from participating in the action to be taken by the Corporation. Under the authority delegated to the Chairman pursuant to 18 U.S.C. 208(b), the Chairman may find that the Board Member need not be disqualified from participating in the particular matter, if: (a) The Board Member makes a full disclosure of the financial interest; and (b) the Chairman furnishes him with a written determination in advance of the action that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the Board Member. Requests for similar determinations for conflicts posed by the financial interests of the Chairman himself shall be submitted to the Chairman of the Civil Service Commission.

Subpart E—Statements of Employment and Financial Interests

§ 905.735–501 Form and content of statements.

Statements of employment and financial interests required to be submitted under this subpart by employees and special Government employees shall contain the information required in the formats prescribed by the Civil Service Commission in the Federal Personnel Manual.

§ 905.735–502 Statements of employment and financial interests by employees.

(a) Employees of the Corporation in the following named positions shall prepare and submit statements of employment and financial interests:

(1) Executive Director;

(2) Assistant Director Legal—General Counsel;

(3) Assistant Director/Finance;

(4) Development Director;

(5) Secretary of the Corporation Administrative Officer;

(6) Construction Manager;

(7) Senior Architect/Planner;

(8) Chief, Real Estate Operations;

(9) Any Contracting Officer of the Corporation; and

(10) Any employee classified as a GS–13 or above whose duties and responsibilities are such that the ethics counselor determines a statement should be filed.

(b) Each statement of employment and financial interests required by this section, except that of the General Counsel, shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street NW., Suite 1148, Washington, D.C. 20004. The General Counsel, as Ethics Counselor, shall submit his statement directly to the Chairman for review.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of this determination upon a written request to the Chairman.

§ 905.735–503 Statements of employment and financial interests by special Government employees.

All special Government employees shall submit a statement of employment and financial interest prior to beginning employment or service with the Corporation. Each statement shall be submitted to the Ethics Counselor, Office of the General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street, NW., Suite 1148, Washington, D.C. 20004, except that the statements of Board Members appointed from private life shall be filed with the U.S. Civil Service Commission.

§ 905.735–504 Procedures for obtaining statements.

(a) Upon the adopting of the regulations of this part, the Ethics Counselor shall deliver to the incumbent of each position named in § 905.735–402 and to each special Government employee, two copies of the appropriate form for filing a statement of employment and financial interests. An enclosure with the forms shall advise that:

(1) The original of the completed form must be returned in a sealed envelope, marked "Personal—In Confidence," to the Ethics Counselor within the time specified by the Ethics Counselor;

(2) The services of the ethics counselor are available to advise and assist in preparation of the statement;

(3) Any additions or deletions to the information furnished must be reported in a supplementary statement at the end of the calendar quarter in which the change occurs; or in the case of a special Government employee, at the time the change occurs; and

(4) No later than June 30 of each year, all special Government employees and employees required to file under § 905.735-402(a) shall file an annual supplementary statement to update the information previously filed.

(b) The Administrative Officer shall be responsible for assuring that a completed statement of employment and financial interests is obtained from each special Government employee prior to the beginning of employment or service with the Corporation. The Administrative Officer shall promptly forward the statements to the Ethics Counselor for review.

§ 905.735-505 Confidentiality of statements.

The Ethics Counselor shall hold in confidence each statement of employment and financial interests, and each supplementary statement within his control. Access to or disclosure of information contained in these statements shall not be allowed, except as the Commission or the Ethics Counselor determine for good cause shown, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), and the regulations and pertinent notices of systems of records prepared by the Civil Service Commission and the Corporation in accordance with that Act.

[FR Doc. 78-36338 Filed 12-28-78; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER B—INTERNATIONAL MAIL

PART 10—INTERNATIONAL EXPRESS MAIL RATES

Rates

AGENCY: Postal Service.

ACTION: Final International Express Mail Rates.

SUMMARY: The Postal Service is beginning International Express Mail Service with the Republic of China (Taiwan), Singapore, and the Federal Republic of Germany (West Germany) at rates indicated in the tables below. Rates to the Federal Republic of Germany are the same as those charged to other European countries. Rates for the Republic of China (Taiwan) and Singapore are new.

EFFECTIVE DATE: The International Express Mail Service rates for the Republic of China (Taiwan) are effective December 27, 1978. The International Express Mail Service rates for Singapore and the Federal Republic of Germany (West Germany) are effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Patricia M. Gibert, (202) 245-5624.

SUPPLEMENTARY INFORMATION: On December 5, 1978, the Postal Service published for comment in the FEDERAL REGISTER proposed rates of postage for International Express Mail. 43 FR 56959. Interested persons were invited to submit written data, views, or arguments concerning these rates. However, no comments were received. Accordingly, the Postal Service adopts without change the rates of postage for International Express Mail set out in the following tables (designated Tables 8-3, 8-11, 8-12, 8-13, and 8-14) for inclusion in publication 42, International Mail, incorporated by reference, 39 CFR 10.1.

(39 U.S.C. 401, 403, 404(a)(2), 407, 410(a); Universal Postal Convention, Lausanne, 1974, T.I.A.S. No. 8231, Art. 6.)

W. ALLEN SANDERS,
Assistant General Counsel.

[7710-12-C]

TABLE 8-3

BELGIUM, FEDERAL REPUBLIC OF GERMANY, FRANCE, NETHERLANDS, AND UNITED KINGDOM

INTERNATIONAL EXPRESS MAIL CUSTOM DESIGNED SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$27.85	$27.88	$27.92	$27.96	$28.00	$28.05	$28.10
2	29.92	29.98	30.06	30.14	30.22	30.32	30.42
3	31.99	32.08	32.20	32.32	32.44	32.59	32.74
4	34.06	34.18	34.34	34.50	34.66	34.86	35.06
5	36.13	36.28	36.48	36.68	36.88	37.13	37.38
6	38.20	38.38	38.62	38.86	39.10	39.40	39.70
7	40.27	40.48	40.76	41.04	41.32	41.67	42.02
8	42.34	42.58	42.90	43.22	43.54	43.94	44.34
9	44.41	44.68	45.04	45.40	45.76	46.21	46.66
10	46.48	46.78	47.18	47.58	47.98	48.48	48.98
11	48.55	48.88	49.32	49.76	50.20	50.75	51.30
12	50.62	50.98	51.46	51.94	52.42	53.02	53.62
13	52.69	53.08	53.60	54.12	54.64	55.29	55.94
14	54.76	55.18	55.74	56.30	56.86	57.56	58.26
15	56.83	57.28	57.88	58.48	59.08	59.83	60.58
16	58.90	59.38	60.02	60.66	61.30	62.10	62.90
17	60.97	61.48	62.16	62.84	63.52	64.37	65.22
18	63.04	63.58	64.30	65.02	65.74	66.64	67.54
19	65.11	65.68	66.44	67.20	67.96	68.91	69.86
20	67.18	67.78	68.58	69.38	70.18	71.18	72.18
21	69.25	69.88	70.72	71.56	72.40	73.45	74.50
22	71.32	71.98	72.86	73.74	74.62	75.72	76.82
23	73.39	74.08	75.00	75.92	76.84	77.99	79.14
24	75.46	76.18	77.14	78.10	79.06	80.26	81.46
25	77.53	78.28	79.28	80.28	81.28	82.53	83.78
26	79.60	80.38	81.42	82.46	83.50	84.80	86.10
27	81.67	82.48	83.56	84.64	85.72	87.07	88.42
28	83.74	84.58	85.70	86.82	87.94	89.34	90.74
29	85.81	86.68	87.84	89.00	90.16	91.61	93.06
30	87.88	88.78	89.98	91.18	92.38	93.88	95.38
31	89.95	90.88	92.12	93.36	94.60	96.15	97.70
32	92.02	92.98	94.26	95.54	96.82	98.42	100.02
33	94.09	95.08	96.40	97.72	99.04	100.69	102.34

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

TABLE 8-11

REPUBLIC OF CHINA (TAIWAN)

INTERNATIONAL EXPRESS MAIL CUSTOM DESIGNED SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$28.31	$28.34	$28.38	$28.42	$28.46	$28.51	$28.56
2	30.84	30.90	30.98	31.06	31.14	31.24	31.34
3	33.37	33.46	33.58	33.70	33.82	33.97	34.12
4	35.90	36.02	36.18	36.34	36.50	36.70	36.90
5	38.43	38.58	38.78	38.98	39.18	39.43	39.68
6	40.96	41.14	41.38	41.62	41.86	42.16	42.46
7	43.49	43.70	43.98	44.26	44.54	44.89	45.24
8	46.02	46.26	46.58	46.90	47.22	47.62	48.02
9	48.55	48.82	49.18	49.54	49.90	50.35	50.80
10	51.08	51.38	51.78	52.18	52.58	53.08	53.58
11	53.61	53.94	54.38	54.82	55.26	55.81	56.36
12	56.14	56.50	56.98	57.46	57.94	58.54	59.14
13	58.67	59.06	59.58	60.10	60.62	61.27	61.92
14	61.20	61.62	62.18	62.74	63.30	64.00	64.70
15	63.73	64.18	64.78	65.38	65.98	66.73	67.48
16	66.26	66.74	67.38	68.02	68.66	69.46	70.26
17	68.79	69.30	69.98	70.66	71.34	72.19	73.04
18	71.32	71.86	72.58	73.30	74.02	74.92	75.82
19	73.85	74.42	75.18	75.94	76.70	77.65	78.60
20	76.38	76.98	77.78	78.58	79.38	80.38	81.38
21	78.91	79.54	80.38	81.22	82.06	83.11	84.16
22	81.44	82.10	82.98	83.86	84.74	85.84	86.94
23	83.97	84.66	85.58	86.50	87.42	88.57	89.72
24	86.50	87.22	88.18	89.14	90.10	91.30	92.50
25	89.03	89.78	90.78	91.78	92.78	94.03	95.28
26	91.56	92.34	93.38	94.42	95.46	96.76	98.06
27	94.09	94.90	95.98	97.06	98.14	99.49	100.84
28	96.62	97.46	98.58	99.70	100.82	102.22	103.62
29	99.15	100.02	101.18	102.34	103.50	104.95	106.40
30	101.68	102.58	103.78	104.98	106.18	107.68	109.18
31	104.21	105.14	106.38	107.62	108.86	110.41	111.96
32	106.74	107.70	108.98	110.26	111.54	113.14	114.74
33	109.27	110.26	111.58	112.90	114.22	115.87	117.52

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

TABLE 8-12

REPUBLIC OF CHINA (TAIWAN)

INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$18.03	$18.06	$18.10	$18.14	$18.18	$18.23	$18.28
2	20.56	20.62	20.70	20.78	20.86	20.96	21.06
3	23.09	23.18	23.30	23.42	23.54	23.69	23.84
4	25.62	25.74	25.90	26.06	26.22	26.42	26.62
5	28.15	28.30	28.50	28.70	28.90	29.15	29.40
6	30.68	30.86	31.10	31.34	31.58	31.88	32.18
7	33.21	33.42	33.70	33.98	34.26	34.61	34.96
8	35.74	35.98	36.30	36.62	36.94	37.34	37.74
9	38.27	38.54	38.90	39.26	39.62	40.07	40.52
10	40.80	41.10	41.50	41.90	42.30	42.80	43.30
11	43.33	43.66	44.10	44.54	44.98	45.53	46.08
12	45.86	46.22	46.70	47.18	47.66	48.26	48.86
13	48.39	48.78	49.30	49.82	50.34	50.99	51.64
14	50.92	51.34	51.90	52.46	53.02	53.72	54.42
15	53.45	53.90	54.50	55.10	55.70	56.45	57.20
16	55.98	56.46	57.10	57.74	58.38	59.18	59.98
17	58.51	59.02	59.70	60.38	61.06	61.91	62.76
18	61.04	61.58	62.30	63.02	63.74	64.64	65.54
19	63.57	64.14	64.90	65.66	66.42	67.37	68.32
20	66.10	66.70	67.50	68.30	69.10	70.10	71.10
21	68.63	69.26	70.10	70.94	71.78	72.83	73.88
22	71.16	71.82	72.70	73.58	74.46	75.56	76.66
23	73.69	74.38	75.30	76.22	77.14	78.29	79.44
24	76.22	76.94	77.90	78.86	79.82	81.02	82.22
25	78.75	79.50	80.50	81.50	82.50	83.75	85.00
26	81.28	82.06	83.10	84.14	85.18	86.48	87.78
27	83.81	84.62	85.70	86.78	87.86	89.21	90.56
28	86.34	87.18	88.30	89.42	90.54	91.94	93.34
29	88.87	89.74	90.90	92.06	93.22	94.67	96.12
30	91.40	92.30	93.50	94.70	95.90	97.40	98.90
31	93.93	94.86	96.10	97.34	98.58	100.13	101.68
32	96.46	97.42	98.70	99.98	101.26	102.86	104.46
33	98.99	99.98	101.30	102.62	103.94	105.59	107.24

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

TABLE 8-13

SINGAPORE

INTERNATIONAL EXPRESS MAIL CUSTOM DESIGNED SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$30.33	$30.36	$30.40	$30.44	$30.48	$30.53	$30.58
2	34.88	34.94	35.02	35.10	35.18	35.28	35.38
3	39.43	39.52	39.64	39.76	39.88	40.03	40.18
4	43.98	44.10	44.26	44.42	44.58	44.78	44.98
5	48.53	48.68	48.88	49.08	49.28	49.53	49.78
6	53.08	53.26	53.50	53.74	53.98	54.28	54.58
7	57.63	57.84	58.12	58.40	58.68	59.03	59.38
8	62.18	62.42	62.74	63.06	63.38	63.78	64.18
9	66.73	67.00	67.36	67.72	68.08	68.53	68.98
10	71.28	71.58	71.98	72.38	72.78	73.28	73.78
11	75.83	76.16	76.60	77.04	77.48	78.03	78.58
12	80.38	80.74	81.22	81.70	82.18	82.78	83.38
13	84.93	85.32	85.84	86.36	86.88	87.53	88.18
14	89.48	89.90	90.46	91.02	91.58	92.28	92.98
15	94.03	94.48	95.08	95.68	96.28	97.03	97.78
16	98.58	99.06	99.70	100.34	100.98	101.78	102.58
17	103.13	103.64	104.32	105.00	105.68	106.53	107.38
18	107.68	108.22	108.94	109.66	110.38	111.28	112.18
19	112.23	112.80	113.56	114.32	115.08	116.03	116.98
20	116.78	117.38	118.18	118.98	119.78	120.78	121.78
21	121.33	121.96	122.80	123.64	124.48	125.53	126.58
22	125.88	126.54	127.42	128.30	129.18	130.28	131.38
23	130.43	131.12	132.04	132.96	133.88	135.03	136.18
24	134.98	135.70	136.66	137.62	138.58	139.78	140.98
25	139.53	140.28	141.28	142.28	143.28	144.53	145.78
26	144.08	144.86	145.90	146.94	147.98	149.28	150.58
27	148.63	149.44	150.52	151.60	152.68	154.03	155.38
28	153.18	154.02	155.14	156.26	157.38	158.78	160.18
29	157.73	158.60	159.76	160.92	162.08	163.53	164.93
30	162.28	163.18	164.38	165.58	166.78	168.28	169.78
31	166.83	167.76	169.00	170.24	171.48	173.03	174.58
32	171.38	172.34	173.62	174.90	176.18	177.78	179.38
33	175.93	176.92	178.24	179.56	180.88	182.53	184.18

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

TABLE 8-14

SINGAPORE
INTERNATIONAL EXPRESS MAIL ON DEMAND SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$20.05	$20.08	$20.12	$20.16	$20.20	$20.25	$20.30
2	24.60	24.66	24.74	24.82	24.90	25.00	25.10
3	29.15	29.24	29.36	29.48	29.60	29.75	29.90
4	33.70	33.82	33.98	34.14	34.30	34.50	34.70
5	38.25	38.40	38.60	38.80	39.00	39.25	39.50
6	42.80	42.98	43.22	43.46	43.70	44.00	44.30
7	47.35	47.56	47.84	48.12	48.40	48.75	49.10
8	51.90	52.14	52.46	52.78	53.10	53.50	53.90
9	56.45	56.72	57.08	57.44	57.80	58.25	58.70
10	61.00	61.30	61.70	62.10	62.50	63.00	63.50
11	65.55	65.88	66.32	66.76	67.20	67.75	68.30
12	70.10	70.46	70.94	71.42	71.90	72.50	73.10
13	74.65	75.04	75.56	76.08	76.60	77.25	77.90
14	79.20	79.62	80.18	80.74	81.30	82.00	82.70
15	83.75	84.20	84.80	85.40	86.00	86.75	87.50
16	88.30	88.78	89.42	90.06	90.70	91.50	92.30
17	92.85	93.36	94.04	94.72	95.40	96.25	97.10
18	97.40	97.94	98.66	99.38	100.10	101.00	101.90
19	101.95	102.52	103.28	104.04	104.80	105.75	106.70
20	106.50	107.10	107.90	108.70	109.50	110.50	111.50
21	111.05	111.68	112.52	113.36	114.20	115.25	116.30
22	115.60	116.26	117.14	118.02	118.90	120.00	121.10
23	120.15	120.84	121.76	122.68	123.60	124.75	125.90
24	124.70	125.42	126.38	127.34	128.30	129.50	130.70
25	129.25	130.00	131.00	132.00	133.00	134.25	135.50
26	133.80	134.58	135.62	136.66	137.70	139.00	140.30
27	138.35	139.16	140.24	141.32	142.40	143.75	145.10
28	142.90	143.74	144.86	145.98	147.10	148.50	149.90
29	147.45	148.32	149.48	150.64	151.80	153.25	154.70
30	152.00	152.90	154.10	155.30	156.50	158.00	159.50
31	156.55	157.48	158.72	159.96	161.20	162.75	164.30
32	161.10	162.06	163.34	164.62	165.90	167.50	169.10
33	165.65	166.64	167.96	169.28	170.60	172.25	173.90

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

[FR Doc. 78-36286 Filed 12-28-78; 8:45 am]

[3510-03-M]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION DEPARTMENT OF COMMERCE

SUBCHAPTER D—VESSEL FINANCING ASSISTANCE

PART 298—OBLIGATION GUARANTEES

Revision of Part

AGENCY: Maritime Administration, Commerce.

ACTION: Final Rule.

SUMMARY: The rule hereby adopted is a revision of the regulations relating to the operation of the program of Obligation Guarantees (Title XI program) authorized by Title XI of the Merchant Marine Act, 1936, as amended (the Act), 46 U.S.C. 1271-1279. The revision conforms the regulations to reflect and implement the extensive technical changes in the program effected by the Federal Ship Financing Act of 1972, P.L. 92-507, amending Title XI of the Act. While Title XI of the Act is applicable to financing assistance for all types of Vessel construction, that part of the Title XI program related to fishing Vessels is administered by the National Oceanic and Atmospheric Administration of the Department of Commerce, (NOAA), pursuant to NOAA regulations, which appear at 50 CFR Part 255.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerard E. Neumann, Director, Office of Ship Financing Guarantees, Telephone 202-377-3773.

SUPPLEMENTARY INFORMATION: On October 8, 1976, the Maritime Administration (MarAd) published in the FEDERAL REGISTER a proposed rule (41 FR 44408) to revise 46 CFR Part 298. The purpose is to provide comprehensive regulations relating to eligibility and other requirements for vessel financing assistance in the form of Obligation Guarantees, authorized by Title XI of the Act, as amended by the Federal Ship Financing Act of 1972.

DISCUSSION OF COMMENTS—MODIFICATIONS

MarAd received 24 written comments. All of these comments were considered in adopting the final revision of Part 298. Nine of the comments recommended the inclusion of a "general waiver" or "general modification" provision, which would allow MarAd greater flexibility in approving Title XI guarantees for a project that does not meet one or more specific requirements in the regulations, but otherwise meets the statutory requirements. This recommendation has not been adopted. The principal purpose for the revision of these regulations has been to inform interested potential participants in the Title XI program of specific requirements and standards that will be applied to determine initial eligibility for Title XI Guarantees and conditions that will be imposed thereafter on participants for continuing the Guarantees. The regulations specifically grant discretion to the Secretary in numerous provisions where MarAd has anticipated the need for greater flexibility.

Some changes have been made in the definitions for purposes of clarification (§ 298.2). "Actual Cost" is now defined exactly as in § 1101(f) of the Act. "Depreciated Actual Cost" has been included in the definitions rather than in § 298.21. The functions of an "Indenture Trustee" have been set forth in more detail.

With respect to the filing of applications (§ 298.3), examples of required information have been included and provision has been made for amendment of an application. A guideline of 120 days has been substituted for the specific time requirement for the filing of a completed application, "in order to afford the Secretary sufficient time for adequate review of the application," and a similar guideline (at least six weeks prior to the anticipated Closing) has been included with respect to timely submission of the Documentation to the Secretary for review. The requirement for compliance with the "guidelines for Documentation" has been deleted.

Establishing citizenship (§ 298.10) has been made applicable only to bareboat charters and charters other than bareboat charters exceeding the time set forth in Part 221, and has been withdrawn as a requirement for shipbuilders unless the shipbuilder becomes the shipowner upon delivery of the Vessel.

Under Vessel requirements (§ 298.11), paragraph (b) has been given a new caption to reflect its emphasis—"Actual Cost"—whether accomplished through solicitation of competitive bids or through negotiation. The Secretary may require the applicant to submit additional technical data, backup cost details and other evidence where considered necessary to make a determination of the estimated actual cost. The requirement for Vessel inspection and certification by the Coast Guard has been limited to Vessels carrying passengers or freight, in accordance with the applicable Coast Guard regulations, if any. The requirement that reconstruction or reconditioning of a Vessel must increase the Vessel's useful life by at least five years has been eliminated.

Financial requirements (§ 298.13) contain financial definitions only for purposes of that section and §§ 298.35 and 298.42. The definitions of "Working Capital" has been modified as it relates to current liabilities, which shall be increased by "one-half of the annual payment of all charter hire and other lease obligations (having a term of more than six months)", rather than by the amount of "Rentals", and shall be reduced by "any excess of unterminated voyage expense over unterminated voyage revenue." The definition of "Deferred Lease Hire" has been substituted for the definition of "Rentals". The authority of the Secretary to waive or modify requirements has been extended to encompass the financial "terms" (definitions), upon determining that there is "adequate security for the Guarantees", in lieu of the requirement that the Secretary make a specific determination that there is "substantial security in addition to that usually required in the Security Agreement".

Obligations secured by multiple Vessels may have a maturity date not later than twenty-five years from the delivery date of the last Vessel, and the condition imposed on the applicant to reduce the amount of Obligations below the maximum allowed under the Act has been deleted from the proposed language (§ 298.20). The required redemption provision will be invoked to maintain adequate security for the Guarantees where the Secretary considers such action to be necessary. No procedural rules or expansion of criteria have been adopted as guidelines for the Secretary's required determination that the interest rate is reasonable, as has been recommended by five of those submitting comments. In this regard, incorporating the language of § 1104(b)(5) of the Act in the regulations was intended to allow the Secretary to exercise broad discretion in considering all relevant factors, not only those specifically required to be considered. No provision has been made to allow a variable interest rate.

A provision has been added to state that where eligibility for Guarantees up to 87½ percent of Actual Cost is dependent upon satisfaction of a minimum horsepower for the main engine, the standard shall be continuous rated horsepower (§ 298.21). Eight of the comments received contained recommendations that consideration be given to expanding the items that are

includible in Actual Cost, upon which the limit for the Guarantees is based, e.g., legal and accounting fees, amounts paid for arranging financing, underwriting or trustee fees, the cost of shoreside spare parts and payments for early delivery. The cost of shoreside spare parts has been specifically included as an Actual Cost item. The exclusion of any amount payable to the shipyard for early delivery has been qualified by use of the word "generally", thus allowing the Secretary some discretion to allow this item where considered appropriate. After careful consideration of the merits of removing or qualifying the exclusion of other items, the decision has been made to reject the recommendations, principally because the determination that the amounts result from arms length transactions of business, poses a considerable administrative burden. With respect to escalation as part of Actual Cost, the examples of indices to be used have been deleted, in deference to comments that they are of little value.

The section on Refinancing (§ 298.23) has been substantially rewritten to clarify the circumstances under which debt incurred more than one year after the delivery or redelivery of a related Vessel may be refinanced. The provisions requiring that the refinancing result in a reduced average annual interest payment of at least 20 percent provoked critical responses from 12 of those submitting comments. In view of the compelling arguments showing the economic advantages of refinancing, aside from significant reduction in the annual average interest payment, this requirement has been eliminated.

MarAd has given careful consideration to comments stating that our interpretation of "facilities and equipment related to marine operations", that may be financed with the proceeds from Obligations, is unduly restrictive and contrary to clear legislative intent. (§ 298.24). MarAd rejects as unreasonable an expansive interpretation of the term "port facilities" that would include permanent or semipermanent structures and real estate.

The prohibition against the payment of excess interest or other consideration has been redrafted more precisely, consistent with a recommendation in the submitted comments (§ 298.26). It applies only to the payment of any consideration, in the nature of interest, which is in excess of the rate approved by the Secretary, as well as to the grant of any security other than the Guarantees. The requirement that the Secretary approve any lease payments has been restricted to lease or charter hire payment for a Vessel that is security for the Obligations, if payment of principal and interest on the Obligations would in any way be dependent upon the proceeds from such lease or charter hire (§ 298.27). This is a specific part of the analysis made by the Secretary in determining an economic soundness, described in § 298.14.

The section relating to conditions of the Mortgage (§ 298.31) had been made more flexible with respect to provision in the Fleet Mortgage for payment of the Obligations in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage. The Secretary is given discretion to discharge the vessel from the Mortgage lien, without requiring payment of the related Obligations, upon determining that adequate security remains for the Guarantees.

The Escrow Fund section (§ 298.33) has been restructured with respect to principal deposit requirements. The rules for allocating Obligations proceeds on an individual vessel basis, where multiple vessels are security for the Guarantees, has been liberalized by allowing allocation to specific vessels. This modification is in response to critical comments that the required allocation to all vessels is inconsistent with the intent of § 1108(a) of the Act and would unfairly restrict withdrawals from the Escrow Fund under some circumstances. The provision for interest deposit has been clarified to state that the basis for calculation shall reflect the principal and interest, if any, remaining on deposit in the Escrow Fund. With respect to disbursements to the Obligor from the fund, the request must be made "no later", rather than "no earlier", than 30 days after the interest payment due date.

The Reserve Fund and Financial Agreement provisions have been modified slightly (§ 298.35). The test of whether a Company no longer meets the alternative financial requirements, so as to become subject to additional covenants, is made after including the "annual financial liability related to the Obligations as a current liability in computing Working Capital," a general description of such liability applicable to any participant in the project subject to financial requirements. Whenever a Company's financial condition improves so that it meets the primary financial requirements the Company may elect to be subject to the covenants applicable to a Company that had satisfied these requirements at Closing, with the consent of the Secretary, rather than be required to promptly inform the Secretary of the change in condition. Title XI Reserve Fund Net Income of a Company required for Reserve Fund deposits shall be computed within 105 days after the end of the accounting year, a change from a 90 day requirement. In making the computation, the numerator of the ratio shall be the total original capitalized cost of all Company Vessels "(whether leased or owned)."

The rules for determining the variable rate of Guarantee Fee (§ 298.36) after Vessel delivery have been redrafted to be consistent with the structure of the rules relating to the determination of the variable rate prior to delivery. In response to criticisms that the Examination and Audit authority of the Secretary was too broad in its application, it has been restricted to books and records "which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel, as well as records of Affiliates and domestic agents connected with such Persons."

Periodic reporting requirement with respect to auditing (§ 298.42) has been modified to specify that the auditors must be independent certified public accountants or licensed public accountants "Licensed to practice by the regulatory authority of a state or other political subdivision of the United States". The required annual financial report shall be due within 105 days after the close of each fiscal year of the company, rather than 90 days.

This revision of Part 298 has been reviewed in accordance with Executive Order 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), Department of Commerce Administrative Order 218-7, "Issuing Government Regulations" and the Maritime Administration implementing procedures, and a determination has been made that a regulatory analysis is not required.

Accordingly, Part 298 of Title 46, Code of Federal Regulations is revised to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart A—Introduction

Sec.
298.1 Purpose.
298.2 Definitions.
298.3 Applications.

Subpart B—Eligibility

298.10 Citizenship.
298.11 Vessel requirements.
298.12 Operator's qualifications.
298.13 Financial requirements.
298.14 Economic soundness.
298.15 Investigation Fee.
298.16 Substitution of participants.

Subpart C—Guarantees

298.20 Term, redemptions and interest rate.
298.21 Limits.
298.22 Amortization of Obligations.
298.23 Refinancing.

298.24 Financing facilities and equipment related to marine operations.
298.25 Financing repayment of construction-differential subsidy.
298.26 Excess interest or other consideration.
298.27 Lease payments.
298.28 Advance of principal payments on the Obligations.

Subpart D—Documentation

298.30 Nature and content of Obligations.
298.31 Mortgage.
298.32 Required provisions in Documentation.
298.33 Escrow Fund.
298.34 Construction Fund.
298.35 Reserve Fund and Financial Agreement.
298.36 Annual Guarantee Fee.
298.37 Examination and audit.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

298.40 Defaults.
298.41 Remedies after default.
298.42 Reporting requirements-financial statement.
298.43 Applicability of regulations.

Subpart F—Administration [Reserved]

AUTHORITY: Part 298 is issued pursuant to §§ 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036), and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973).

Subpart A— Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing the provisions of Title XI of the Merchant Marine Act, 1936, as amended by P.L. 92-507 (46 U.S.C. 1271-1279), governing Federal ship financing assistance.

§ 298.2 Definitions.

For the purpose of this part—

(a) "Act" means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) "Actual Cost" of a Vessel means, as of any specified date, the aggregate, as determined by the Secretary, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel (described in § 298.21(b)).

(c) "Affiliate" or "Affiliated" means any Person directly or indirectly controlling, controlled by or under common control with another Person.

(d) "Closing" means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Preferred Mortgage is executed as security to the Secretary.

(e) "Depository" means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof or the District of Columbia, which is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation and accepts deposits for purposes of implementing the program authorized by Title XI of the Act.

(f) "Depreciated Actual Cost" of a Vessel means the Actual Cost of the Vessel, as defined in subsection (b) of this section (less a residual value of 2½ percent of United States shipyard construction cost), depreciated on a straightline basis over the useful life of the Vessel as determined by the Secretary, not to exceed twenty-five years from the date the Vessel was delivered by the shipbuilder or, if the Vessel has been reconstructed or reconditioned, the Actual Cost of the Vessel depreciated on a straightline basis from the date the Vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel determined by the Secretary.

(g) "Documentation" means all or part of the agreements relating to an entire Title XI financing which must be furnished to the Secretary, irrespective of whether the Secretary is a party to each agreement.

(h) "Guarantee" means the contractual commitment of the United States of America, represented by the Secretary, endorsed on each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default (described in § 298.40 of this part) and the date of payment.

(i) "Guarantee Fee" means the annual fee payable to the Secretary in consideration for the continuing Guarantees.

(j) "Indenture Trustee" means a bank with corporate trust powers or a trust company with a combined capital and surplus of at least $3,000,000, which has duties under the terms of a Trust Indenture, entered into with the Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursment of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligees. Pursuant to a specific authorization of the Secretary, the Indenture Trustee may also authenticate the Guarantees.

(k) "Letter Commitment" means a letter from the Secretary to an applicant for Guarantees, setting forth specific determinations made by the Secretary with respect to the applicant's proposed project, as required by the Act and regulations of this part, and stating the Secretary's commitment to execute Guarantees, subject to compliance by the applicant with any conditions specified therein.

(l) "Maritime Administration" means that agency created within the Department of Commerce by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036).

(m) "Mortgage" includes a Preferred Mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a Preferred Mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended.

(n) "Obligation" means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

(o) "Obligee" means the holder of an Obligation.

(p) "Obligor" means any party primarily liable for payment of principal of or interest on any Obligation.

(q) "Paying Agent" means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

(r) "Person" means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

(s) "Preferred Mortgage" means a Mortgage which is recorded, endorsed and otherwise in compliance with the requirements of the Ship Mortgage Act, 1920, as amended (46 U.S.C. 911-984).

(t) "Secretary" means the Secretary of Commerce, acting by and through the Assistant Secretary of Commerce for Maritime Affairs, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Commerce or the Assistant Secretary of Commerce for Maritime Affairs.

(u) "Secretary's Note" means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(v) "Security Agreement" means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the obligor to the Secretary as security for the issuance of Guarantees.

(w) "Vessel" means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States.

§ 298.3 Applications.

(a) *Content and Amendment.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, United States Department of Commerce, Washington, D.C. 20230, and be certified in the manner prescribed on said form. All required information, including copies of any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements with respect to the Vessel or Vessels, shall be presented on the form or in exhibits and schedules submitted with the application. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees, stating the name of the applicant and the date of the application. Any amendment of data contained in the application filed shall be marked "Amendment," and shall contain a statement on the first page thereof, clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of application. The certification required on Form MA 163 shall be affixed to each amendment. The Secretary will not process the application until the applicant has submitted substantially all required information.

(b) *Time requirements.* Each application should be submitted to the Maritime Administration sufficiently prior to the anticipated date by which the applicant requires a Letter Commitment, in order to afford the Secretary sufficient time for adequate review of the application. It usually takes the Secretary at least 120 days to process an application and issue a Letter Commitment. An applicant to whom a Letter Commitment has been issued shall submit four sets of the Documentation to the Secretary for review. The Documentation should be submitted to the Secretary for review sufficiently prior to the anticipated Closing to afford the Secretary time to complete an adequate review of the Documentation. In most instances, at least six weeks should be allotted for the review of the Documentation. The applicant should utilize the standard form of Documentation which will be provided by the Secretary when, in the opinion of the Secretary, there is a reasonable degree of certainty that a Letter Commitment will be issued.

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of $1,000, which will be nonrefundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(d) *Confidential Information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. The same requirement shall apply to any amendment to the application. If no claim of exemption is made when the application or amendment is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act (FOIA), of any information contained in the application. The following procedures shall apply with respect to the assertion and review of FOIA exemption claims:

(1) *Form and bases for claim.* Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, by a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments or amendments thereto, to which exemption from disclosure is claimed by noting "Confidential Information" thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority.

(2) *Determination and advice.* The Secretary, Maritime Administration, shall make a determination as to any claim of exemption made by the applicant, pursuant to the preceding paragraph. If the Secretary, Maritime Administration, makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality in the event of any request for production of such information made pursuant to the Freedom of Information Act.

(3) *Return of information.* If a determination unfavorable to the applicant is made as to any item of information in the application or amendment, the applicant will be advised that unless a request for return of such information is made by registered mail to the Secretary, Maritime Administration, postmarked within 30 days of the date of the letter advising the applicant of the unfavorable determination, the information shall be associated with the balance of the application for processing, and shall be subject to disclosure by the Maritime Administration upon receipt of any request for disclosure under the Freedom of Information Act. If a request for return of information is made, the Maritime Administration will retain no copies of such information, and will process the application based only on the information that has not been returned.

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act, the applicant and any other Person, (including, but not limited to settlors, owner trustees, owner participants, bareboat charterers and such charterers other than bareboat charterers whose charter exceeds the blanket approval period provided for in Part 221 of this Title 46), shall establish its United States citizenship, within the meaning of section 2 of the

Shipping Act, 1916, (1916 Act), as amended, (46 U.S.C. 801-852), sections 37 and 38 of the Merchant Marine Act, 1920, as amended, (46 U.S.C. 861-889), and, as applicable, section 905(c) of the Act, unless the Secretary approves a non-citizen participation under the authority of sections 9 and 41 and Section 37, as applicable, of the 1916 Act. The Secretary will not approve an application providing for ownership of such Vessel by, or bareboat chartering of such Vessel to, a non-U.S. citizen. See also Part 221 of this Title 46 concerning the documentation, transfer or charter of vessels to non-U.S. citizens. Citizenship may also be required of any Person who does not have a legal or beneficial ownership in the Vessel if such Person is the operator or has authority to direct the operation of the Vessel on behalf of the Shipowner.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR Part 355.

(c) *After Letter Commitment.* Any Person who has become identified with the project, for a reason indicated in paragraph (a) of this section, and who has not previously established United States citizenship within the prior twelve calendar months, promptly shall establish its United States citizenship in the form and manner prescribed in 46 CFR Part 355.

(d) *Supplemental proof.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (c) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such Closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such Closing.

§ 298.11 Vessel requirements.

Each Vessel to be constructed, reconstructed or reconditioned and financed by issuance of Guarantees shall meet the following criteria:

(a) *United States construction.* The Vessel shall be constructed, reconstructed or reconditioned entirely in a shipyard or shipyards of the United States, within the meaning of section 505 of the Act, and, where practicable, only from articles, materials and supplies of the growth, production or manufacture of the United States, as defined in section 1401(h) of the Tariff Act of 1930 (10 U.S.C. 1401(h)). If an applicant for Guarantees elects to use foreign-source materials or components in the Vessel, the cost thereof shall not be included in the Actual Cost of the Vessel used as the basis for determining the amount of Guarantees, as set forth in § 298.21, except if the Secretary shall approve an application for waiver upon determining that:

(1) The article, material or supply is not customarily grown, produced or manufactured in the United States; or

(2) With respect to other than major components of the hull or superstructure, and any material used in the construction thereof, compliance with the United States origin requirement of this section would unreasonably delay completion of a Vessel beyond its contract delivery date, provided that the applicant submits evidence satisfactory to the Secretary that due diligence was employed to obtain materials of United States origin.

(b) *Actual Cost.* The applicant's estimated actual cost as described in § 298.21(b), must be approved by the Secretary for the construction, reconstruction, reconditioning of a vessel as a condition for issuance of the Letter Commitment. The Secretary may require the applicant to have the shipyard with whom he has contracted to build the vessel to submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data. The estimated cost of the vessel may include escalation for the anticipated construction period of the vessel, as described in § 298.21(e).

(c) *Class, condition and operation.* The Vessel shall be constructed, maintained and operated so as to meet the highest classification, certification, rating and inspection standards for vessels of the same age and type imposed by the American Bureau of Shipping (ABS), or such other standards as may be approved by the Secretary, and comply with all applicable laws, rules and regulations as to condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and all applicable treaties and conventions to which the United States is signatory, including, but not limited to the International Convention for Safety of Life at Sea. All Vessels carrying passengers or freight shall be deemed to be carrying such passengers or freight for hire, and shall be inspected and certificated in accordance with the applicable United States Coast Guard regulations, if any, at the earlier of the delivery of such Vessel or Vessels and the initial Closing.

(d) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of class (if the Vessel is classified), and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

§ 298.12 Operator's qualifications.

No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

§ 298.13 Financial requirements.

(a) *In general.* To be eligible for Guarantees, the applicant and other participants in the project must submit at the time of application, and as subsequently required by the Secretary, financial information satisfactory to the Secretary that financial resources are or will be available to support the project which is the subject of the Title XI application.

(b) *Financial definitions.* For the purpose of this section 298.13 and sections 298.35 and 298.42 of this part—

(1) "Company" means any Person subject to financial requirements imposed under paragraphs (d) and (e) of this section and paragraphs (b) and (c) of § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) "Working Capital" means the difference between current assets and current liabilities, both determined in

accordance with generally accepted accounting principles, adjusted as follows:

(i) Current assets shall be reduced with respect to:

(A) Amounts in or required to be set aside in any Title XI Reserve Fund, pursuant to § 298.35(e) or CCF Security Amount prescribed by § 298.35(f), (excluding that portion of such fund which is available for the payment of current liabilities) that is being maintained pursuant to an agreement covering a Vessel owned or leased by the Company, or in another similar fund required under any other mortgage, indenture or other agreement to which the Company is a party;

(B) Any securities, obligations or evidences of indebtedness of an Affiliate of the Company or of any stockholder, director, officer or employee (or any member of the family of the Company or of such Affiliate) except reasonable advances to agents required for the normal current operation of the Company's Vessels and receivables outstanding for not more than 60 days, arising out of the ordinary course of business; and

(C) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expense, except where the Secretary determines such reduction to be inappropriate.

(ii) Current liabilities shall be increased by one-half of the annual payment of all charter hire and other lease obligations (having a term of more than six months), other than charter hire and other lease obligations already included and reported as a current liability on the Company's balance sheet. Further, in determining current liabilities there shall be deducted any excess of unterminated voyage expense over unterminated voyage revenue, except where the Secretary determines such reduction to be inappropriate.

(3) "Equity" (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but exclusive of (i) any receivables from an Affiliate of the Company or any stockholder, director, officer, or employee (or any member of the employee's family) of the Company, or of an Affiliate of the Company (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and (ii) any increment resulting from the reappraisal of assets.

(4) "Long Term Debt" means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long Term Debt in accordance with generally accepted accounting principles, less the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. There shall also be included Deferred Lease Hire, any guarantee or other liability for the debt of any other Person (except fees and expenses of an Indenture Trustee and endorsements for deposits of checks and other negotiable instruments acquired in the ordinary course of business). Deferred income taxes shall not be included in Long Term Debt.

(5) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel and those other items which customarily would be capitalized as Vessel costs under generally accepted accounting principles.

(6) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel, depreciated on a straight line basis over the same useful life of the Vessel as determined by the Secretary for Actual Cost, and depreciated as required by § 298.21(g).

(7) "Deferred Lease Hire" means as of any date, the outstanding long term portion of lease or charter hire (other than lease or charter hire already included and reported as a liability on the Company's balance sheet) relating to vessels, major equipment or facilities leased or chartered by the Company. The Secretary shall determine:

(i) Which leases or charters are to be included in the computation of Deferred Lease Hire; and

(ii) The computation of the outstanding long term portion of such lease or charter hire, which computation will not exceed the greater of:

(A) The amount of the Obligations relating to the leased or chartered asset;

(B) One-half the aggregate of all lease or charter hire (excluding operating components) over the term of the lease or character; and

(C) The amount determined in accordance with generally accepted accounting principles.

(c) *Applicability.* The financial resources shall be adequate to meet the Equity requirements in the project and existing Working Capital requirements, as set forth in paragraphs (d) and (e) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels to be security to the Secretary for the Guarantees, except that if the owner is not the operator, the overall financial requirements shall be allocated among the owner, the operator and other parties as determined by the Secretary.

(2) The Company shall satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, a pro forma balance sheet shall be submitted at the time of the application, reflecting any adjustment made pursuant to paragraph (d)(1)(i) of this section, and a revised pro forma balance sheet, reflecting the completion of the projected financing, shall be submitted at least five business days before the first Closing at which the Obligations are issued.

(d) *Primary financial requirements at Closing.* Where the primary minimum financing requirements at Closing are satisfied, the financial convenants in § 298.35(b) are applicable. Primary financial requirements can apply to one or more Companies, and are determined as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal Vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, the Secretary may adjust the requirement as considered appropriate. Also, if the Secretary determines that the Company's Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, the Secretary may make adjustments to the Working Capital requirements.

(ii) *Equity (net worth).* The Company's Equity shall be the greater of (A) 50 percent of its Long Term Debt or (B) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment.

(2) *Lessee or charterer as operator.* Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The operator's Working Capital requirement shall be the same as that which would have otherwise been imposed on the owner as operator under subparagraph (1) (i) of this paragraph (d) and based on the same premise stated therein.

(ii) *Long Term Debt.* The operator's Long Term Debt shall not be greater than twice its Equity.

(iii) *Equity (net worth).* Different Equity requirements shall be imposed

on the owner and operator of the Vessel, respectively, as follows:

(A) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(B) The operator's Equity shall be the same as that which would have otherwise been required of the owner as operator under subparagraph (1)(ii) of this paragraph (d).

(e) *Alternative financial requirements at Closing.* If the applicant is unable to demonstrate to the satisfaction of the Secretary that there is or will be compliance with the primary financial requirements at Closing set forth in paragraph (d) of this section, eligibility for Guarantees shall be based upon satisfaction of alternative minimum financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this part. Alternative financial requirements are as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, the alternative requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital, which may be adjusted by the Secretary in accordance with the provisions set forth in paragraph (d)(1)(i) of this section, shall be an amount at least equal to the sum of the following (less the annual financing liability related to the Obligations):

(A) Eight percent of the estimated Capitalizable Cost of a Vessel to be financed upon delivery (redelivery in the case of a reconstructed or reconditioned Vessel), or eight percent of the estimated Depreciated Capitalizable Cost of a Vessel to be financed or refinanced after delivery. With respect to a reconstructed or reconditioned Vessel, the estimated Capitalizable Cost or Depreciated Capitalizable Cost, whichever is applicable (depending upon when financing occurs), shall be that related only to the cost of work performed in the reconstruction or reconditioning;

(B) One year's premium for vessel insurance including Hull, Machinery, Protection and Indemnity, and War Risk coverage; and

(C) One year's Guarantee Fee.

(ii) *Equity (net worth).* The Company's Equity shall be at least equal to 90 percent of the Equity as shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but not less than the sum of the following:

(A) The difference between (1) the estimated Capitalizable Cost of a new Vessel to be financed upon delivery, the estimated Capitalizable Cost of the work to be performed in reconstructing or reconditioning a Vessel, the Depreciated Capitalizable Cost of an existing Vessel to be refinanced or the Depreciated Capitalizable Cost of a new Vessel to be financed after delivery, and (2) the amount of the Guarantees; and

(B) The amount of Working Capital as determined in accordance with the provisions of subdivision (1)(i) of this paragraph.

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the alternative financial requirements at Closing usually are as follows:

(i) *Working Capital.* The Company shall have Working Capital in an amount determined in accordance with the provisions of subdivision (1)(i) of this paragraph (e), applicable if the owner were the operator.

(ii) *Equity (net worth).* Different Equity requirements shall be imposed on the operator and the owner, respectively as follows:

(A) The operator shall have Equity at least equal to 90 percent of the Equity shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but no less than its Working Capital requirement.

(B) The owner shall have Equity in an amount determined in accordance with the provisions of subdivision (1)(ii)(A) of this paragraph (e).

(f) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, the Secretary may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraphs (d) and (e) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(g) *Subordinated debt considered to be Equity.* With the consent of the Secretary, part of the Equity requirements applicable under paragraphs (d) and (e) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Reserve Fund and Financial Agreement (described in § 298.35 of this part). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees or mortgage insurance under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to the Secretary, providing, among other things, that if any Title XI financing or advance by the Secretary to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness incurred by the Obligor and to any security interest obtained by the Secretary in that property or other property, with respect to the subsequent indebtedness.

(h) *Modified requirements.* The Secretary may waive or modify the financial terms or requirements otherwise applicable under §§ 298.13, 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. The Secretary may impose similar financial requirements on any Person providing other security for the Guarantees.

§ 298.14 Economic soundness.

No Letter Commitment for Guarantees shall be given by the Secretary without finding that the proposed project, with respect to which the Vessel or Vessels are to be financed under Title XI, will be economically sound. In making the economic soundness finding, the Secretary shall consider, together with other factors, the market potential for the employment of the Vessel or Vessels over the life of the Guarantees, projected revenues and expenses of the operation, the length of the Guarantee period and any charters, contracts of affreightment, transportation agreements or similar agreements which will assure the employment of the Vessel or Vessels.

§ 298.15 Investigation Fee.

(a) *In general.* Prior to the issuance of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment.

This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable) and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fees shall be due and payable.

(b) *Maximum.* The Investigation Fee, including any amount imposed pursuant to paragraph (d) of this section, shall not exceed one-half of one percent of the aggregate amount of Obligations to be issued. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3) shall be credited against the Investigation Fee.

(c) *Base fee.* The base fee shall be as follows:

(1) *After Vessel completion.* If Guarantees are issued after construction, reconstruction or reconditioning of the Vessel or Vessels that serve as security for the Guarantees, the fee shall be $1,000 for the first $300,000 of Obligations plus one-eighth of one percent of the balance of the Obligations.

(2) *Before Vessel completion.* If Guarantees are issued before completion of the project, the base fee shall be 110 percent of that charged with respect to a completed project; however, if all the proceeds from the sale of the Obligations relating to a Vessel are deposited into the Escrow Fund until the delivery of such Vessel, the base fee shall not exceed $1,000 above the base fee calculated in accordance with Section 298.15(c)(1).

(d) *Amendment of application.* In the event an amendment to an application is filed with the Secretary, additions to the base fee shall be imposed under the following circumstances:

(1) *Before Documentation reviewed.* There shall be an additional charge of $3,000 to pay the cost of processing an amendment made after the Letter Commitment has been issued, but before review of the Documentation by the Maritime Administration, if the Secretary determines that the amendment represents a substantial change in the application. A substantial change would include, but not be limited to, a change from the ownership to a sale and leaseback arrangement, drastic alteration of the Vessel design, large cost increases or other changes that affect the basic economics of the project.

(2) *After Documentation reviewed.* If an amendment is made after review of the Documentation and prior to the sale of any Obligation, and the Secretary determines that the amendment represents a substantial change in the Documentation, there shall be an additional charge of one-half of the Investigation Fee charged pursuant to paragraph (c) of this section, but not more than $50,000. A substantial change would include, but not necessarily be limited to, a basic change in the structure of the financing, such as a change from an ownership to a sale and leaseback arrangement, or a substitution of parties resulting in a basic change affecting the credit risk of the financing. Ordinary changes in the Documentation such as cost changes, assignments, simple substitutions of parties, not affecting the basic credit or structure of the transaction, and other similar changes shall not be construed to be a substantial change.

§ 298.16 Substitution of participants.

Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amendment by P.L. 92-507. A non-refundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable, as follows:

(a) *Mortgage assignment.* A mortgagee applying for permission to assign an insured mortgage to another Person shall pay a fee of $1,500 to defray the costs of processing and reviewing the application.

(b) *Mortgage assumption.* Payment of $3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

Subpart C—Guarantees

§ 298.20 Term, redemptions and interest rate.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, not exceeding the anticipated physical and economic life of the Vessel or Vessels. Such maturity date may be less than but in no event more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees; and

(3) The later of twenty-five years from the date of original delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as determined by the Secretary.

(b) *Required redemptions.* Where multiple Vessels are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation of a stated maturity must be determined by the Secretary to be reasonable, taking into account the range of interest prevailing in the private market for similar loans and the risks assumed by the Secretary.

§ 298.21 Limits.

(a) *Actual Cost basis.* The amount of Obligations to be issued shall be satisfactory to the Secretary based upon the economic soundness of the transaction. Such amount may be less than but in no event more than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels. If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard with respect to such horsepower shall be continuous rated horsepower. Where existing debt is being refinanced, pursuant to section 1104(a)(4) of the Act, the amount of new Obligations issued in respect to such existing debt may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) Seventy-five or 87½ percent whichever is applicable, of the Depreciated Actual Cost of the Vessel with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel construction costs such as designing, engineering, constructing (including performance bond premiums approved the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually specified in Vessel construction contracts, e.g., changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid on subordinated debt considered to be Equity, and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. In approving Actual Cost the Secretary will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing

documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Federal documentary tax stamps;

(8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;

(9) Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act and § 298.36 of this part;

(10) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;

(11) The cost of the condition survey required by § 298.11(d) of this part and all work necessary to meet the standards set forth therein;

(12) The cost of all items of material installed in the Vessel which are of foreign origin unless the Secretary has granted a waiver, as provided for in § 298.11(a) of this part;

(13) The cost to the Shipowner of a Vessel which is to be reconstructed or reconditioned, e.g., cost of acquisition or repair work; and

(14) Generally not include any amount payable to the shipyard for early delivery of the Vessel.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in § 298.33 and § 298.34 of this part), and prior to the final Actual Cost determination for each Vessel, the applicant shall submit to the Secretary documents substantiating all claimed costs eligible under § 298.21(b). These documents may include but need not be limited to copies of invoices, change orders, subcontracts and, where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions contained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by the Secretary. The Secretary must subsequently approve the amount of escalation claimed by the applicant as Actual Cost.

(f) *Moneys received in respect of construction of the Vessels.* If the Obligor or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect to construction of a Vessel (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, the Obligor shall give written notice of such fact to the Secretary. So long as the Guarantees have not been paid by the Secretary, the Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel owner of liquidated damages for late delivery of the Vessel. If the Secretary shall have paid the Guarantees, the Obligor or other recipient shall promptly pay these moneys including any liquidated damages to the Secretary for deposit into the Federal Ship Financing Fund.

(g) *Depreciated Actual Cost.* After a Vessel has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel.

§ 298.22 Amortization of Obligations.

Generally after Vessel delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(1) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity; or

(2) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity.

§ 298.23 Refinancing.

The Secretary may approve Guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt had been issued for one of the purposes set forth in section 1104(a)(1)—(3) of the Act. If the existing debt was incurred more than one year after the delivery or redelivery of the related Vessel, the proceeds of such Obligations must be applied to the construction, reconstruction or reconditioning of other Vessels or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). Further, the refinancing of existing debt will be permitted only if any security lien on the Vessel or Vessels is discharged immediately prior to the placing of a Mortgage on the Vessel or Vessels by the Secretary. The applicant must satisfy all the eligibility requirements set forth in Subpart B of this part.

§ 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction, or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

§ 298.25 Financing repayment of construction-differential subsidy.

The Secretary may approve Guarantees with respect to Obligations secured by one or more Vessels and issued to finance the repayment to the United States of the whole or any part of construction-differential subsidy (CDS) which has been paid under the provisions of Title V of the Act. The repayment of CDS may be related to Vessel operation in domestic trade, within the meaning of section 506 of the Act, or any other purpose authorized by the Secretary.

§ 298.26 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligee of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as inter-

est in excess of the rate approved by the Secretary; or

(b) Grants of security to an Obligee in addition to the Guanantees.

§ 298.27 Lease payments.

If payment of principal and interest on Obligations would in any way be dependent upon the lease or charter hire payments for a Vessel that is security for the Obligations, the amount and conditions of lease or charter payments shall be subject to the Secretary's approval.

§ 298.28 Advance of principal payments on the Obligations.

The Secretary, shall have the discretion to make or commit to make an advance or advances of principal on the Obligations, based on the determination that the Company has insufficient cash flow or other access to captial to make such payment or payments and there is a reasonable expectation that such advances will be repaid. The terms of an advance shall be satisfactory to the Secretary and shall include but not necessarily be limited to:

(a) The interest rate shall be equal to the greater of: (1) the sum of the effective interest rate borne by the Obligations and a guarantee fee computed in accordance with § 298.36; or (2) the sum of the interest rate Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and a guarantee fee computed in accordance with § 298.36.

(b) The advance may have a maturity date no later than that of the Obligations;

(c) The advance shall have periodic payments of principal and interest payable, to the extent practicable, on the same dates as that of the Obligations with the right of prepayment at any time without premium.

(d) As long as any advance is outstanding, no dividends can be paid without prior written consent of the Secretary provided, however, that if the Obligations and such advance or advances are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(e) The advance, both as to principal and interest relating to the advance of principal shall be secured by the Mortgage.

Subpart D—Documentation

§ 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper shall include on its face the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Guarantee of the United States, authenticated by the Indenture Trustee. If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to, time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

§ 298.31 Mortgage.

(a) *In general.* Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of security interest in one or more Vessels, in favor of the Secretary. During construction of a new Vessel, the security interest may be perfected by a filing under the Uniform Commerical Code or by the recording of any form of mortgage in a jurisdiction where the Uniform Commercial Code has not been enacted. The Security Agreement shall provide that upon delivery of the new Vessel, or at the time Guarantees are issued with respect to an existing Vessel, a Preferred Mortgage shall be executed in favor of the Secretary. The Preferred Mortgage shall be recorded with the United States Coast Guard at the Vessel's home port, endorsed upon the Vessel's document (or provision made for said endorsement within 21 days of recordation) and delivered to the Secretary.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to the Secretary by the Obligor. If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage shall be executed upon delivery of the first vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to the Secretary's Mortgage lien. The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage. The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. The Secretary may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), with respect to all related Obligations, as deemed necessary to maintain adequate security for the Guarantees. Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid, unless the Secretary shall otherwise determine that there remains adequate security for the Guarantees, and the Vessel shall be discharged from the Mortgage lien.

§ 298.32 Required provisions in Documentation.

(a) *Performance under shipyard and related contracts.* Generally, shipyard and related contracts shall contain provisions for:

(1) Furnishing by the shipyard of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard demonstrates to the satisfaction of the Secretary that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel, as well as all related work projects being performed by the contractor and subcontractors, to a representative of the Secretary, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel is being constructed, reconstructed or reconditioned in accordance with contract plans and specifications approved by the Secretary;

(3) Submitting to the Secretary, upon request, one set of selected microfilm of shipyard plans for the Vessel as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard in a form acceptable to the Secretary, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard and a representative of the Secretary as to each payment;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless the Secretary consents in writing to such use; and

(6) Requiring the use in Vessel construction of only articles, materials and supplies of the growth, production

or manufacture of the United States, as described in detail in section 298.11(a) of this part. If Obligations will not be issued during the period of construction of a Vessel, shipyard and related contracts should generally includes the provisions specified in paragraph (a) (2), (3) and (6) of this section.

(b) *Assignments and general covenants from Obligor to Secretary.* The Obligor shall assign rights and shall covenant with the Secretary, as required by the Secretary, including, but not limited to, the following:

(1) Assignment of all or part of the right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due with respect to Vessel construction;

(3) Assignment, where applicable, of all or a part of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel and all hire payable to the Obligor, and delivery to the Secretary of required consents by appropriate parties to any such assignments;

(4) Covenants relating to the annual filing of satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR 355; warranty of Vessel title free from all liens other than those specifically excepted; maintaining United States registry of the Vessel; compliance with the provisions of the Ship Mortgage Act of 1920; Notice of Mortgage, payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountants;

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish to the Secretary a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified or independent licensed public accountants unless otherwise verified by the Secretary; and

(ii) Costs of American and foreign materials (including services);

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the Vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery, and Protection and Indemnity coverages underwritten by the Maritime Administration as authorized by Title XII of the Act; and such additional insurance as may be required by the Secretary. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by the Secretary by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by the Secretary through marine insurance brokers and/or underwriting agents approved by the Secretary. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by the Secretary and/or under such other forms of policies which the Secretary may approve in writing and/or policies issued by or for the Maritime Administration insuring the Vessel against the usual risks provided for under such forms, including such amounts of increase value other forms of "total loss only" insurance permitted by the Hull and Machinery insurance policies; and

(7) Collateralize other debt due to the Secretary under other Title XI financings.

§ 298.33 Escrow Fund.

(a) *Circumstances requiring deposits.* The Obligor may be required to establish a fund with the Secretary (Escrow Fund) in accordance with section 1108(a) of the Act and the Security Agreement. The deposit with the Secretary shall be in cash or Federal Reserve Bank funds.

(b) *Principal Deposit-Single Vessel.* If a single Vessel is security for the Guarantees, the deposit of principal shall be calculated by subtracting from the aggregate principal amount of the Obligations sold, 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations.

(c) *Principal deposit—multiple Vessels.* If multiple Vessels are security for the Guarantees, with the Secretary's approval, the Obligor may calculate the aggregate deposit of principal amount in the Escrow Fund (i) by computing on an individual Vessel basis by prorating the proceeds of the sale of Obligations, within the meaning of the proviso in section 1108(a) of the Act, based on the ratio of the Vessel's Actual Cost or Depreciated Actual Cost, to the total Actual Cost and Depreciated Actual Cost of all Vessels which are security for the Guarantees less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of deposit, by or for the account of the Obligor for the construction, reconstruction or reconditioning of the Vessel for which the deposit is being computed or (ii) by allocating portions of the proceeds (up to 75 or 87½ percent, whichever is applicable under section 1104(b) of the Act) from the sale of the Obligations to specific Vessels and computing the deposit based on the Actual Cost or Depreciated Actual Cost of such Vessels paid, as of the date of deposit, by or for the account of the Obligor. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations. The foregoing allocations are for the purpose of calculating the deposits only and are not applicable or controlling with respect to disbursements from the Escrow Fund.

(d) *Interest deposit.* Interest on the aggregate principal amount deposited pursuant to paragraphs (b) and (c) hereof, shall be computed at the same rate borne by the Obigations, for one interest payment period, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighted average of such interest rates. The calculation of the amount of interest to be deposited shall take into account the principal and interest, if any, remaining on deposit in the Escrow Fund.

(e) *Disbursements prior to Termination Date.* Unless the Guarantees shall become payable prior to the Termination Date (described in paragraph (h) of this section) of the Escrow Fund, the Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, and within a reasonable time after written request from the Obligor, make disbursements from the fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery or redelivery, and to the shipbuilder, the Obligor or to any other Person entitled thereto, with respect to costs included in Actual Cost. Also, the Secretary may disburse to the Obligor, upon request

made at least 10 business days prior to, and no later than 30 days after the date on which the payment of interest on the Obligations is due, any excess, as determined by the Secretary, of required interest on deposit in the Escrow Fund on the date of disbursement. However, no payment or reimbursement shall be made from the Escrow Fund to any Person until:

(1) The Construction Fund (described in § 298.34 of this part), where provided for in the Security Agreement, has been exhausted;

(2) At least 12½ or 25 percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel for which the disbursement is requested has been paid by or for the account of the Obligor from sources other than the proceeds of the Obligations, except that where the Obligor is required to pay in 25 percent of the Actual Cost or Depreciated Actual Cost, and demonstrates to the Secretary's satisfaction the ability to pay in such 25 percent, after the Obligor has paid the first 12½ percent of the Actual Cost or Depreciated Actual Cost, the Obligor may be permitted to withdraw moneys from the Escrow Fund, for payment of the next 37½ percent of such Actual Cost or Depreciated Actual Cost, and withdraw the remainder of the Escrow Fund moneys after paying in the next 12½ percent of Actual Cost or Depreciated Actual Cost; and

(3) The Secretary has approved the Actual Cost items and has determined that the amounts for which reimbursement is requested have been paid and that there has been satisfactory certification as to the percentage of completion of the Vessel or Vessels, at least equal to that amount of Actual Cost paid, except where the Secretary has specifically consented to an alternative procedure.

(f) *Where Guarantees become payable.* If, prior to the Termination Date of the Escrow Fund, the Guarantees shall become payable by the Secretary, all amounts in the Escrow Fund at such time (including interest and realized income which have not yet been paid to the Obligor) shall be paid into the Federal Ship Financing Fund, created by section 1102 of the Act, and be credited against any amounts due or to become due to the Secretary from the Obligor with respect to all Guarantees, and to the extent not so required, be paid to the Obligor.

(g) *Requisition of title, termination of construction contract or total loss of Vessel.* In the event of requisition of title to or seizure or forfeiture of the Vessel, termination of the construction contract (unless the Obligor and the Secretary elect to have the Vessel completed) or the construction-differential subsidy contract (where applicable), or the actual or constructive total loss of the Vessel, all moneys remaining on deposit in the Escrow Fund may be disbursed by the Secretary for any of the following purposes:

(1) Redemption or payment of Obligations and accrued interest thereon to the date of redemption or payment, in accordance with the applicable provisions of the Documentation relating to such redemption or payment, where there is no existing default;

(2) Payment to the Obligor, if all outstanding Obligations are retired and paid other than by payment of the Guarantees, and all amounts payable to the Secretary and secured by the Mortgage have been paid; and

(3) Payment in accordance with the priorities set forth in § 298.41 of this part, if a default has occurred and if the Secretary shall have paid the Guarantees.

(h) *Disbursement upon Termination Date.* The Escrow Fund shall terminate on a date agreed upon by the Obligor and the Secretary as set forth in the Security Agreement (Termination Date). If on such Termination Date the full amount of Actual Cost of the Vessel has not been paid by or for the account of the Obligor, or is not then due and payable, the Obligor and the Secretary may extend the Termination Date by agreement. When the Secretary makes a final determination of Actual Cost at the written request of the Obligor, or at the instance of the Secretary if the Termination Date has occurred without such a request, the Termination Date shall be deemed to be the date of such final determination of Actual Cost. If payments under the Guarantees have not become due prior to the Termination Date, then on or immediately after said Termination Date, any balance in the Escrow Fund shall be disbursed by the Secretary in the following manner:

(1) Where the principal amount of the Obligations issued less the principal amount of Obligations which have been retired or paid on or before such Termination Date, and not availed of as a credit against any mandatory redemptions otherwise required to be made on or before such Termination Date, shall be in excess of 75 or 87½ percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel as finally determined by the Secretary as of the Termination Date, the Secretary shall pay such excess to the Indenture Trustee in accordance with the provisions of the Documentation relating to such payment. A written notice from the Secretary and the Obligor shall accompany such payment, stating the Termination Date and directing the Indenture Trustee to redeem an equal amount of Obligations;

(2) From the balance remaining after the deduction of the principal amount of the Obligations to be redeemed, an amount equal to interest accrued to the date fixed for redemption of the principal amount of Obligations to be redeemed shall be simultaneously paid from the Escrow Fund by the Secretary to the Indenture Trustee to be applied to the payment of interest to the date to be fixed for redemption. In the event the balance remaining in the Escrow Fund after giving effect to paragraph (1) is insufficient to pay the interest accrued to the date fixed for redemption, such balance shall be paid from the Escrow Fund to the Indenture Trustee and the Obligor shall simultaneously deposit with the Indenture Trustee an amount equal to the difference between the balance being paid to the Indenture Trustee from the Escrow Fund and the total amount required for the payment of accrued interest; and

(3) Any balance of the Escrow Fund shall be paid to the Obligor.

(i) *Investment and liquidation of the Escrow Fund.* The Secretary may invest and reinvest deposits to the Escrow Fund in securities which are obligations of the United States and with maturities such that sufficient cash will be reasonably available to the Escrow Fund as required to make periodic authorized disbursements. The Secretary shall deposit the Escrow Fund into a special Treasury Department account with instructions, pursuant to an agreement with the Obligor, for the investment, reinvestment and liquidation of the Escrow Fund.

(j) *Income on the Escrow Fund.* If the Guarantees shall not have become due, after receiving notice that the Treasury Department has deposited income earned on the Escrow Fund into the special account, the Secretary shall direct the payment of such income to the Obligor. Income shall include the excess of the cash received from the sale of securities or the payment of securities at maturity (less any losses from the sale of securities not made up by payments by the Obligor pursuant to provisions of the Security Agreement) over the cost thereof, and interest received with respect to the securities.

(k) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Escrow Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Escrow Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Escrow Fund.

§ 298.34 Construction Fund.

(a) *Deposit.* Where the Security Agreement provides for an Escrow Fund deposit, usually a provision shall also be included therein for establishing Construction Fund deposits. Under the terms of this provision, at the time of each sale of Obligations the Obligor shall deposit with a Depository, in a special account subject to the joint control of the Obligor and the Secretary, cash equal to the principal amount of the Obligations issued at such time less the sum of (1) the aggregate principal amount then required to be in the Escrow Fund and (2) the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e) of this part) which the Secretary determines has been paid by or for the account of the Obligor. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel delivery, and to the shipbuilder, the Obligor, or to any other Person entitled thereto with respect to costs included in Actual Cost. The Secretary shall not authorize any disbursement from the Construction Fund unless payments have been made by or for the account of the Obligor from sources other than the Obligations, in accordance with the requirements of subdivisions (2) and (3) of § 298.33(e).

(c) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Construction Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Construction Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Construction Fund.

§ 298.35 Reserve Fund and Financial Agreement.

(a) *Purpose.* In order to provide further security to the Secretary and to insure payment of the interest and principal due on the Obligations, the Company shall be required to enter into a Title XI Reserve Fund and Financial Agreement (Agreement) at the first Closing at which Obligations are issued. The Secretary may waive or modify provisions of the Agreement based on an evaluation of the aggregate security for the Guarantees.

(b) *Financial Covenants for Companies meeting primary financial requirements.* Covenants shall be imposed on the Company which is subject to compliance with the primary financial requirements at Closing, set forth in § 298.13(d), as follows:

(1) *Continuous covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Enter into a service, management or operating agreeement with respect to a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of charter or contract,

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in new business activities not directly connected with marine operations or guarantee (or otherwise be liable for) debts of other Persons.

(iv) Pay any dividend except as may be permitted by (A) or (B) below. If the Company is party to an operating-differential subsidy contract, the payment of dividends is subject to the provisions of § 298.35(g).

(A) From retained earnings in an amount specified in (C) below providing that the year in which the dividend is paid there is no operating loss in the current fiscal year to the date of the payment of the dividend and (1) there was no operating loss in the immediate preceding three fiscal years, or (2) there was a one year operating loss during the immediate preceding three fiscal years and (i) such loss was not in the immediate preceding fiscal year, and (ii) there was positive net income for the three year period.

(B) If dividends are not payable under (A) above, a dividend can be paid in an amount equal to the total operating net income for the immediate preceding three fiscal year period provided that (1) there were no two successive years of losses, (2) in the year in which the dividend is paid there is no operating loss in such fiscal year to the date of payment of the dividend, and (3) the dividend paid would not exceed an amount specified in (C) below.

(C) Dividends may be paid from earnings of prior years in an aggregate amount equal to (1) 40 percent of the Company's total net income after tax for each of the prior years, less any dividends that were paid in such years; or (2) the aggregate of the Company's total net income after tax for such prior years, providing that after the payment of such dividend, the Company's long term debt does not exceed its net worth. In computing net income extraordinary gains, such as gains from the sale of assets, etc., shall be excluded.

(2) *Additional Covenants which may become applicable.* If the Company shall at any time no longer satisfy the primary financial requirements, or such condition would occur after giving effect to any of the proposed transactions set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, covert capital into debt, make distributions, or pay any dividends, provided, however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by Section 298.35(g);

(ii) Make loans, advances, investments in or repayments of existing debts to Affiliates, stockholders, officers or directors;

(iii) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified by the Secretary in the Agreement;

(iv) Pay salaries in excess of amounts specified in the Agreement, pay subordinated indebtedness or make loans; or

(v) Invest in securities other than those that qualify as eligible investments under the Agreement.

(c) *Financial Covenants for Companies meeting the alternative financial requirements.* Covenants shall be imposed on the Company which is subject to the alternative financial requirements at Closing, set forth in § 298.13(e), as follows:

(1) *Continuous covenants.* So long as the Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions, prohibited by the Documentation, which actions include but are not limited to those of the following nature.

(i) Enter into a service, management or operating agreement for a Vessel financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to an Affiliate under any form of Charter or Contract.

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in any new business activities not directly connected with marine operations or guarantee (or otherwise become liable for) debts of other Persons;

(iv) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified for the Secretary in the Agreement;

(v) Make any loans or invest in any securities other than Eligible Investments for Title XI Reserve Fund; or

(vi) Pay any subordinated indebtedness other than in accordance with a subordination agreement approved by the Secretary.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the alternative financial requirement (after including the annual financial liability relating to the Obligations as a current liability in computing Working Capital), or such condition would occur after giving effect to any proposed transaction set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, make distributions, or pay any dividend, provided however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by Section 298.35(g);

(ii) Make loans, advances, investments or prepayments of existing debts to Affiliates, stockholders, officers or directors, or invest in the securities of any Affiliate; or

(iii) Pay salaries in excess of amounts specified in the Agreement.

(3) *Covenants where Company's financial condition improves to meet primary financial requirements.* Whenever the Company, based on a review of its financial position, determines that it meets the primary financial requirements set forth in § 298.13(d), it may inform the Secretary of this fact, and submit such financial statements and all additional information which the Secretary shall consider necessary to verify compliance with such financial requirements. With the consent of the Secretary, the Company may elect thereafter to be subject to covenants applicable to a Company which had satisfied the primary financial requirements at Closing.

(d) *Title XI Reserve Fund Net Income.* The Agreement shall provide that within 105 days after the end of its accounting year, the Company shall compute its net income attributable to the operation of one or more Vessels that were constructed, reconstructed, reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation utilizes a ratio expressed as a percentage, and applies this percentage to the Company's total net income after taxes. The numerator of the ratio shall be the total original capitalized cost of all Company Vessels (whether leased or owned) which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(e) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the primary financial requirements set forth in § 298.13(d), the Company shall make one or more deposits to a special joint depository account with the Secretary (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, shall be determined as follows:

(1) If the Company is the owner of the Vessel, an amount (pro rated for a period of less than a full year) that is equal to 10 percent of the Company's aggregate original equity investment in the Vessel or Vessels shall be deducted from Title XI Reserve Fund Net Income.

(2) Fifty percent of the Title XI Reserve Fund Net Income adjusted where applicable, in accordance with subdivision (1) of this paragraph (e), shall be deposited into the Title XI Reserve Fund.

(3) There shall also be deposited any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the documentation to which the Company is a party.

(4) Irrespective of the Company's deposit requirement, as stated in preceding subdivisions (1)–(3) of this paragraph (e), the Company shall not be required to make any deposits into the Title XI Reserve Fund if any of the following events shall have occurred:

(i) The Company shall have discharged the Obligations and related Secretary's Note and shall have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations shall have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(f) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company shall enter into an agreement, satisfactory to the Secretary, providing that all such deposits of assets therein shall be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount shall be subject to the Secretary's prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

(g) Dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract. (Reserved)

§ 298.36 Annual Guarantee Fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel, the Secretary

shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of a Vessel, the Guarantee Fee shall be imposed at an annual rate of not less than ½ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt of the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The Guarantee Fee rate shall be subject to annual redetermination by the Secretary in accordance with the tests set forth in paragraphs (c) and (d) of this section, and the Secretary shall promptly give notice to the Obligor of a rate change for such annual period. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the credit source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel delivery.* For annual periods beginning prior to the delivery date of a Vessel being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅜ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel delivery.* For annual periods beginning on or after the Vessel delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt but less than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ¾ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅝ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* The Initial Guarantee Fee covering the 12-month period commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The Guarantee Fee for each subsequent annual period must be paid to the Secretary at least 65 days prior to each anniversary of said payment. The Secretary shall refund the prepaid Guarantee Fee if the Guarantees shall have terminated, other than by reason of default, prior to the anniversary date.

(f) *Adjustment of Guarantee Fee.* If the Secretary at any time determines that the amount of any Guarantee Fee should be adjusted for any reason, the Secretary shall promptly give written notice thereof, specifying the correct amount, the basis for computation thereof and the amount of the deficiency or excess. With respect to any deficiency, payment shall be made to the Secretary within 30 days after receipt of such notice. Any excess payment shall, except if any default has occurred and has not been cured, be refunded by the Secretary. If such refund is $100 or less, it shall be applied as a credit against future payments unless a specific request for such refund is made to the Secretary.

(g) *Increase in Guarantee Fee due to Security Default.* If a Security Default, as described in § 298.40(c) of this part, shall have occurred and be continuing, the Secretary, after giving written notice to the Obligor of such Security Default, may increase the existing Guarantee Fee rate, if less than the maximum allowed under paragraph (a) of this section, to the maximum rate at the expiration of 60 days after receipt of notice by the Obligor, except if the Obligor shall have cured such Security Default or the Secretary shall have waived the Security Default during the 60-day period.

(h) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

(i) *Interest on late payment of Guarantee Fees.* The Secretary shall charge the Obligor interest computed at a rate equal to the prevailing rate on one-year Treasury Obligations as of December 31 of the preceding year (computed on the basis of a 365 day calendar year) with respect to the annual guarantee fee for each day following the 55th day specified in § 298.36(e) during which payment of

such fee has not been received by the Secretary.

§ 298.37 Examination and audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel, as well as records of Affiliates and domestic agents connected with such Persons, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel with respect to which Guarantees or an insurance contract is in force. When a Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment Default.* In the case of any default in the payment of principal or interest with respect to the Obligations, the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter.

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand, make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In General.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* After a default has occurred and is continuing and before making payment required under the Guarantees, the Secretary may take the Vessel and hold, lease, charter, operate or use the Vessel, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security Proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreements;

(2) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(3) All advances, including interest thereon, by the Secretary, pursuant to the Security Agreement and all reasonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note; and

(6) To the extent of any collateralization by the Obligor of other debt due to the Secretary from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of:

(1) The aggregate of payments made pursuant to the Guarantees; and

(2) The actual expenses of collection of security proceeds, or a specific amount provided for in the Documentation.

§ 298.42 Reporting requirements—financial statements.

The accounts of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970. The accountants performing such audits may be the regular auditors of the Company.

(a) *Reports of Company and other Persons.* Except as otherwise required by the Secretary, the Company shall file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with the Maritime Administration as specified in the Documentation. Included shall be the balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period, a statement of income for the period and any other statement that the Secretary shall consider necessary to accurately reflect the Company's financial condition and the results of its operations. By letter to the Company, the Secretary shall specify the form required for reporting and the number of copies to be submitted. The Secretary may, by notice to the Company, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects the Secretary's security for the Guarantees. The required financial report for the annual period shall be due within

105 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report shall be due within 105 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement. The annual and semiannual reports, respectively shall be in the form prescribed or approved by the Secretary. The annual report shall be certified by the public accountants after audit. Certification of the semiannual report by the accountants may be required by the Secretary. Where independent certification is not required, a responsible corporate officer shall attach a certification that such report is based on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(b) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the Vessels, the requirements for annual and semiannual accounting reports of the Obligor may be modified accordingly by the Secretary.

§ 298.43 Applicability of the Regulations.

The regulations in this part shall be in effect as to all applications for commitments for Guarantees, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under Part 298 of this title (23 F.R. 384) as of the effective date hereof, but shall not affect any commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Guarantees, insurance contracts, commitment for Guarantees or Documentation.

Subpart F—Administration (Reserved)

(Section 204(b), 1109, Merchant Marine Act, 1936, as amended ((46) U.S.C. 1114(b), 1279(b)), Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by P.L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 F.R. 19707, July 23, 1973).)

Dated: December 22, 1978.

By Order of the Assistant Secretary for Maritime Affairs, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Administration.

[FR Doc. 78-36248 Filed 12-28-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-854]

PART 1—PRACTICE AND PROCEDURE

Combining FCC Forms 701 and 321 and Amending Section 1.534 of the Rules

PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In an effort to reduce paperwork, the FCC combines two application forms into one. FCC Form 701, "Application for Additional Time to Construct Radio Station;" and FCC Form 321, "Application for Construction Permit to Replace Expired Construction Permit," are combined into a new Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit."

DATE: Effective March 23, 1979, unless notice is given of a later effective date.

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

FOR FURTHER INFORMATION CONTACT:

Lorraine B. Schnaebele, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the Matter of combining FCC Forms 701 and 321 and amending § 1.534 of the Rules accordingly; order.

Adopted: December 12, 1978.

Released: December 20, 1978.

By the Commission:

1. In its continuing effort to reduce paperwork, the Commission is combining two of its application forms into one. FCC Forms 701, "Application for Additional Time to Construct Radio Station," and 321, "Application for Construction Permit to Replace Expired Permit," are combined into a single, new FCC Form 701.

2. Section 1.534 of our Rules is being amended accordingly.

3. We conclude that adoption of the form and the amendment of Section 1.534 will serve the public interest, convenience and necessity. The new form and the amendment impose no additional burdens and raise no issue upon which comments would serve any useful purpose. Accordingly, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Therefore, *it is ordered,* That, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the Commission's Rules and Regulations are amended as set forth in the attached Appendix A; and the new FCC Form 701 as set forth in Attachment B is adopted, subject to approval by the General Accounting Office. The effective date of each is March 23, 1979, unless notice is given of a later effective date.

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

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

Attachment: Appendices A and B.

APPENDIX A

1. Section 1.534 is amended to read as follows:

Section 1.534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit." The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the Commission of sufficient reasons for filing within less than 30 days prior to the expiration date. Such applications will be granted upon a specific and detailed showing that the failure to complete was due to causes not under the control of the grantee, or upon a specific and detailed showing of other matters sufficient to justify the extension. If approved, such extensions will be limited to periods of not more than 6 months.

(b) Application for a construction permit to replace an expired construction permit shall be filed on FCC Form 701. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.

[6712-01-C]

Proposed Form - SAMPLE Appendix B

Form Approved
GAO No. B-180227 (RO)

United States of America
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR EXTENSION OF CONSTRUCTION PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT

FOR COMMISSION USE ONLY

FILE NO.

1. Name of applicant *(See instruction C)*

2. Address *(Number, street, city, state, zip code)*

Telephone No. *(Include Area Code)*

INSTRUCTIONS

A. This form is to be used in all cases when applying for additional time to construct a station or when applying for construction permit to replace expired permit. (See the following Parts of the Commission's Rules:

BROADCAST - Part 1
COMMON CARRIER - Parts 21, 23 and 25

B. Prepare and file two copies if for any class of broadcast service; if for common carrier service prepare and file one copy. File with the Federal Communications Commission, Washington, D.C. 20554 *(Sign all copies)*

C. The name of the applicant must be stated exactly as it appears on the construction permit/expired construction permit.

D. This application shall be personally signed by the applicant, if any applicant is an individual, by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

E. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATIONS ARE NOT APPLICABLE SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

3. PURPOSE OF APPLICATION: *(Check one)*

a. Additional time to construct radio station ☐
b. Construction permit to replace expired permit ☐ *(Not to be used under Part 21)*

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT

File Number	Call Letter
Frequency	**Channel No. (Broadcast only)**

Station Location

5. EXTENT OF CONSTRUCTION

(a) Has equipment been delivered?

☐ YES ☐ NO

IF No, answer the following:

From whom ordered *(If no order has been placed, so indicate)*

Date Ordered	Date Delivery Promised

(b) Has installation commenced?

☐ YES ☐ NO

If Yes, submit as Exhibit a description of the extent of installation and the date installation commenced.

(c) Estimated date by which construction can be completed.

6. (a) If application is for extension of construction permit, submit as Exhibit reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

(This form supersedes previous editions of FCC Form 701 and 321.)

FCC Form 701

Proposed Form - SAMPLE

7. Are the representations contained in the application for construction permit still true and correct?

[.] YES [ ] NO

If No, give particulars in Exhibit .

THE APPLICANT hereby waives any claim to the use of any particular frequency or of ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this _____ day of _____ , 19__.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U. S. CODE, TITLE 18, SECTION 1001.

_____
(Name of Applicant)

BY _____
(Signature)

TITLE _____

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended.

The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with the public interest.

The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, dismissed, or designated for hearing.

If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P. L. 93-579, DECEMBER 31, 1974, 5 U. S. C. 552a (e) (3).

EXHIBITS furnished as required by this form:

Exhibit No.	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which)	Official Title

[FR Doc. 78-36339 Filed 12-28-78; 8:45 am]

FCC Form 701 (back)

[3510-22-M]

Title 50—Wildlife and Fisheries

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

PART 611—FOREIGN FISHING

1978 Quarterly Reports

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final regulation.

SUMMARY: This regulation provides instructions for submission of quarterly reports covering fishing operations conducted in 1978 by foreign vessels in the Northwest Atlantic Ocean, under the authority of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*, as amended).

DATES: This regulation is effective immediately. All quarterly reports for 1978 must be submitted by April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Eugene Heyerdahl, Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543; telephone (617) 548-5123.

SUPPLEMENTARY INFORMATION: The proposed foreign fishing regulations for 1978, which were published September 9, 1977 (42 FR 45551), contained a requirement for the submission of quarterly reports on foreign fishing activities in the Northwest Atlantic Ocean (§ 611.50(f)(4)). That provision was virtually identical to the 1977 requirement (paragraph (f)(3) for sections 611.50-611.54, 42 FR 8811), except that the 1978 data were to be recorded in weekly segments, while the 1977 data had been recorded in biweekly segments.

When the final foreign fishing regulations for 1978 were published (42 FR 60681, November 28, 1977), the quarterly report provision, § 611.50(d)(2), was reserved. The National Marine Fisheries Service was developing the more elaborate reporting requirements which will apply to foreign fishing vessels in 1979 (see 1979 foreign fishing regulations, § 611.50(e)(2), 43 FR 59291, December 19, 1978). Because these provisions were not completed until late in 1978, they will not be applied to reports on fishing activities in 1978. Instead, the regulation proposed for 1978 is adopted as final. Reports for all four quarters of 1978 must be submitted by April 1, 1979, to: Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

The Assistant Administrator for Fisheries has determined that this regulation does not constitute a major Federal action requiring the preparation of an environmental impact statement, nor does it require a regulatory impact analysis under Executive Order 12044. Because the regulation must take effect before the end of 1978, the Assistant Administrator has determined that any further comment period is unnecessary and against the public interest.

Signed at Washington, D.C., this 22nd day of December, 1978.

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

JACK W. GEHRINGER,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

§ 611.50(d)(2), Quarterly report (1978 foreign fishing regulations) is adopted as follows:

* * * * *

(d) * * *

(2) *Quarterly report.* A quarterly report shall be submitted by the designated representative of each foreign nation. Reports must be submitted no later than April 1, 1979. The quarterly report shall contain catch and effort statistics for all species and gear types for weekly time periods reflecting 0°30′ square areas on a vessel by vessel basis. Reports shall be submitted using 0°30′ square areas on either Statland 21B Forms, magnetic tape, computer cards, or printouts.

* * * * *

[FR Doc. 78-36218 Filed 12-28-78; 8:45 am]

[4310-55-M]

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of DeSoto National Wildlife Refuge, Iowa and Nebraska, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to sport fishing of DeSoto National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1979 through February 28, 1979 and April 15, 1979 through September 30, 1979.

FOR FURTHER INFORMATION CONTACT:

George E. Gage, Refuge Manager, DeSoto NWR, R-1, Box 114, Missouri Valley, Iowa 51555, telephone AC 712-642-4121.

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the DeSoto National Wildlife Refuge, Iowa and Nebraska, only on areas designated by signs and maps as being open to fishing. These areas, comprising 800 acres, are delineated on maps available at the refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, Suite 106, Rockcreek Office Building, 2701 Rockcreek Parkway, North Kansas City, Missouri 64116. Sport fishing shall be in accordance with all applicable Iowa or Nebraska regulations, depending upon which state the person is properly licensed for, and subject to the following special regulations:

1. Area open to ice fishing during daylight hours only from January 1, 1979 through February 28, 1979 provided that ice conditions are safe enough to permit this activity.

2. Area open to sport fishing 6:00 a.m. to 10:00 p.m., from April 15, 1979 through September 30, 1979. Entrance not permitted after 9:00 p.m.

3. Trot or throw lines and float lines are not permitted.

4. Archery fishing and spear fishing is permitted from May 1, 1979, through June 15, 1979. Only the following fishes can be taken with bow and arrow or spear: Bigmouth buffalo (*Ictiobus cyprinellus*), Smallmouth buffalo (*Ictiobus bubalus*), Carp (*Cyprinus carpio*), Longnose Gar (*Lepisosteus osseus*), and Shortnose Gar (*Lepisosteus platostomus*).

5. Taking or attempting to take bait by digging or seining is not permitted.

6. Fishing with more than two lines and with more than two hooks on each line is not permitted.

7. Motor or wind driven conveyances are not permitted on the lake from January 1, 1979 through February 28, 1979.

8. The use of boats, with or without motors, is permitted from April 15, 1979 through September 30, 1979.

9. From September 15, 1979 through September 30, 1979, only boats with-

out motors or boats with motors of 25 horsepower or less are permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: December 12, 1978.

GEORGE E. GAGE,
Refuge Manager.

[FR Doc. 78-36337 Filed 12-28-78; 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.

[6325-01-M]

CIVIL SERVICE COMMISSION

[5 CFR Part 890]

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Effective Dates; Birth or Acquisition of a Child

AGENCY: Civil Service Commission.

ACTION: Proposed rulemaking.

SUMMARY: An enrollee of the Federal Employees Health Benefits Program who is enrolled for self only and who has a baby, or acquires a child as a new family member in some other manner, may change to a family enrollment and provide coverage for the child after the birth or acquisition occurs. However, under current regulations, the earliest such a change can become effective is the first day of the first pay period which begins after the registration to change enrollment is received in the employing office. As a result, medical expenses of the child incurred between birth or acquisition and the effective date of the change must be borne entirely by the employee or annuitant. The proposed amendment would permit a change to family coverage made in conjunction with the birth or acquisition of a child to become effective on the first day of the pay period in which the child is born or acquired, or, if not in pay status at that time, the first day of the pay period in which the enrollee returns to pay status.

DATE: Comments must be received on or before February 27, 1979.

ADDRESS: Comments should be directed to Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, Civil Service Commission, 1900 E. St., NW., Washington, DC 20415

FOR FURTHER INFORMATION CONTACT:

Edward G. Borchers, Bureau of Retirement, Insurance, and Occupational Health, Office of Policy Development and Technical Services, Room 4334, 1900 E Street NW., Washington, D.C. 20415, 202-632-4684.

It is proposed to amend 5 CFR 890.306 by redesignating the present paragraph (d) as paragraph (e) and adding a new paragraph (d) as set out below:

§ 890.306 Effective Dates.

* * * * *

(d) *Birth or addition of a child.* The effective date of a change in enrollment under § 890.301(e) made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, is the first day of the pay period in which the child is born or becomes an eligible family member. However, if the enrollee is not in a pay or annuity status during that pay period, the enrollment shall not become effective until the first day of the first pay period in which the enrollee returns to pay or annuity status.

(e) *Generally.* * * *

(5 U.S.C. 8913)

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

[FR Doc. 78-35957 Filed 12-28-78; 8:45 am]

[3410-34-M]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 92]

IMPORTATION OF CATTLE EXPOSED TO SPLENETIC, SOUTHERN OR TICK FEVER OR FEVER TICKS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document will serve to give advance notice to the Department's intent to consider amending the import regulations which provide for the importation of cattle which have been exposed to splenetic, southern or tick fever or have been infested with or exposed to fever ticks within the 60 days preceding their importation into the State of Texas from Mexico. This action is believed to be needed to provide additional protection to livestock of the United States against the introduction and spread of tick fever and cattle fever ticks. The effect of this action is to notify the public of the Department's intent to review the importation of such cattle from Mexico.

DATE: Comments on or before March 29, 1979.

ADDRESS: Comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 734, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, Maryland 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION: The Act of August 30, 1890, as amended (21 U.S.C. 104), authorizes the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom.

The regulations (9 CFR 92.35(a)) provide that cattle which have been exposed to splenetic, southern or tick fever, or which have been infested with or exposed to fever ticks may be imported into the State of Texas from Mexico, except into areas quarantined because of said disease or tick infestation provided certain specified conditions are met. Such cattle must be freed of ticks before importation and are prohibited importation into any State other than Texas. However, if the cattle were exposed to splenetic, southern or tick fever or were infested with or exposed to ticks within 60 days of their importation, there appears to be a significant likelihood that such cattle may be carrying splenetic, southern or tick fever. This is believed to impose an undue threat of introduction and spread of disease among livestock of the United States. Further, permitting the importation of such cattle is believed to diminish the incentive for controlling and eradicating ticks in areas of Northern Mexico adjacent to the United States-Mexico international boundary and contributes to the continuing spread of splenetic, southern or tick fever into Texas from Mexico. Additionally, it creates a heavy financial burden on the cattle industry of the United States and on State and Federal Governments because of funds required to conduct tick eradication activities.

In view of these facts a determination has been made by the Department that the practice of importing cattle into the State of Texas from Mexico which have been exposed to splenetic, southern or tick fever, or which have been infected with or exposed to fever ticks within the 60 days preceding their movement to the port of entry should be reviewed.

Therefore, by means of this document the Department gives advance notice of its intent to propose an amendment to the regulations at a future appropriate date which would delete the provisions contained in the regulations (9 CFR 92.35(a)) which provide for the importation of such cattle from Mexico into the State of Texas.

A target date of January 1, 1980, has been set by the Department for completion of the rulemaking process.

Done at Washington, D.C. this 21st day of December 1978.

PIERRE A. CHALOUX,
Deputy Administrator, Veterinary Services.

[FR Doc. 78-36042 Filed 12-28-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-18]

PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

Changed Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Change in Hearing Location.

SUMMARY: On November 2, 1978 (43 FR 52186, November 8, 1978) the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearing concerning production incentives for marginal properties.

DATE: Public hearing—January 9, 1979—Austin, Texas.

ADDRESS: The public hearing on this proposal scheduled for Austin, Texas, on January 9, 1979 will take place at the Lone Star Room, Austin Marriott, 6121 I-35 North at U.S. Highway 290. This is a change from the location announced in the notice which was the Federal Building Room 5777, 300 East 8th Street, Austin, Texas.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette, 202-254-5201.

Issued in Washington, D.C., December 22, 1978.

DOUGLAS G. ROBINSON,
Assistant Administrator for Regulations and Emergency Planning, Economic Regulatory Administration.

[FR Doc. 78-36360 Filed 12-26-78; 2:48 pm]

[6450-01-M]

[10 CFR Part 211]

[Docket No. ERA-R-78-3]

PROPOSED AMENDMENTS TO ENTITLEMENTS PROGRAM TO REDUCE THE LEVEL OF BENEFITS RECEIVED UNDER THE SMALL REFINER BIAS

Change of Hearing Location

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of change of hearing location.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that the location of the January 9, 1979 San Francisco hearing as set forth in its November 14 notice of proposed rulemaking and public hearing (43 FR 54632, November 22, 1978) has been changed to the following location: San Franciscan Hotel, 1231 Market Street, Stevenson Room, San Francisco, Ca. 94103.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2214, Washington, D.C. 20461, (202) 254-5201.

Issued in Washington, D.C. on December 21, 1978.

DOUGLAS G. ROBINSON,
Assistant Administrator, Regulations & Emergency Planning, Economic Regulatory Administration.

[FR Doc. 78-36283 Filed 12-26-78; 2:33 pm]

[6210-01-M]

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0193]

ELECTRONIC FUND TRANSFERS

Scope and Purpose, Exempted Transfers, Issuance of Access Devices, Conditions of Liability of Consumer for Unauthorized Transfers, and Definitions and Rules of Construction

AGENCY: Board of Governors of the Federal System.

ACTION: Proposed rule.

SUMMARY: The Board is published for comment regulations to implement two sections of the Electronic Fund Transfer Act which become effective on February 8, 1979. Section 911 of the Act relates to issuance of cards or other means of access and § 909 to consumer liability for unauthorized transfers. The Board is also proposing certain model disclosure clauses and is publishing for comment two tentative outlines of the complete regulation. Finally, the Board is also publishing for comment an economic impact analysis, as required by § 904 of the Act.

DATE: Comments must be received on or before January 29, 1979.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should refer to docket number R-0193.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412). Regarding the economic impact analysis: Cynthia A. Glassman, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2611).

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The Board is publishing for comment five sections of Regulation E[1] to implement certain provisions of the Electronic Fund Transfer Act (Title XX, Pub. L. 95-630), enacted on November 10, 1978. The Act, which requires the Board to issue implementing regulations, will provide the following rights and responsibilities, among others, to participants in electronic fund transfers: disclosure to consumers of the terms and conditions of EFT services, right to documentation of transfers and to periodic account statements, establishment of error resolution procedures, limits on consumer liability for unauthorized transfers, restrictions on unsolicited issuance of EFT cards, and the liability of financial institutions in certain instances for failure to make transfers or to stop payment of preauthorized transfers.

The effective date of most of the Act is May 10, 1980. Sections 909 and 911, however, will become effective 90 days after enactment, on February 8, 1979. These two sections establish, respectively, limits on consumer liability for unauthorized transfers which occur

[1] Please note that the original Regulation E, Purchase of Warrants, was rescinded as of November 9, 1978 (43 FR 53708, Friday, November 17, 1978).

after loss, theft or unauthorized use of an EFT card, code or other means of access and a partial ban on the unsolicited issuance of EFT access devices.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other Federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff have met with staff members from the enforcement agencies.

Federal savings and loan associations should note that they will be subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that §§ 545.4-2 will be promptly amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board, to the extent practicable, to demonstrate that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board has prepared a preliminary statement on the foregoing issues, which is published in section (4) herein, and solicits comment on the statement. The statement and the proposed regulation have been transmitted to Congress, as required by § 904(a)(4).

The Act (in § 904(b)) requires the Board to issue model disclosures clauses, written in readily understandable language, for optional use by financial institutions to facilitate compliance with the disclosure requirements of § 905 and to aid consumer understanding of the rights and responsibilities provided by the Act. Although § 905 does not take effect until May, 1980, § 911(b)(2) requires disclosures comparable to those required by § 905, and § 911 becomes effective in February, 1979. Thus, it is appropriate for the Board to propose model clauses for these disclosures now, along with the regulations implementing § 911. In addition, § 911(b)(3) requires that the Board provide a clear disclosure for use by issuers to inform consumers that an unsolicited access device is not validated and how the consumer may dispose of the device if it is not wanted. The Board is proposing model clauses for the disclosures that would be required by the regulation to implement § 911(b)(2) on an interim basis, and for the disclosure required by § 911(b)(3) of the Act and the corresponding provision in the regulation. The model clauses are discussed in detail in section (3) of this material.

Section 904(c) permits the Board to modify the requirements of the Act as they affect small financial institutions upon a determination that such modifications are necessary to alleviate any undue compliance burden upon such institutions. The Board solicits comment on whether any such modifications in the proposed sections are necessary. Comments on this issue should attempt to demonstrate that compliance with the proposed regulation would impose undue cost, administrative or other burdens upon small financial institutions.

Section 904(d) requires the Board to assure that the requirements of the Act are imposed upon persons (other than financial institutions holding a consumer's account) that are offering consumers electronic fund transfer services. The Board solicits information regarding the offering of such services by non-financial institutions, a description of the services, and whether specific provision should be made in the regulation to insure that such persons are subject to the Act's requirements.

The Board also proposes to rescind five Public Information Letters issued under Regulation Z (445, 520, 528, 921 and 1082) because they conflict with the proposed regulation. The Board solicits comment on whether these letters or any other letters should be rescinded.

The Board is publishing two tentative outlines of the entire regulation that reflect somewhat different approaches to the regulation's structure. The Board solicits comment on which of the two outlines represents the more functional structure for the regulation.

(2) *Regulatory Provisions. Section 205.1—Scope and Purpose.* This section is an introductory statement of the regulation's requirements and is intended to provide consumers, financial institutions and issuers with general information about the Act and regulation.

Section 205.2—Exempted Transfers. The Act does not contain a separate section devoted to exemptions. However, § 903(6), which defines "electronic fund transfer," excludes certain services from the Act's coverage. For clarity, the proposed regulation sets forth these exemptions in this separate, freestanding section.

Briefly, the transfers that would be exempted are: (a) electronic check, draft or similar paper instrument authorization services that do not directly debit or credit a consumer's account, (b) transfers for consumers by Fedwire, Bankwire or similar wire transfer services, (c) purchases or sales of securities or commodities by brokers registered with or regulated by the Securities and Exchange Commission, (d) automatic transfers of funds from savings to demand deposit accounts, as permitted by recent amendment of 12 CFR § 217.5(c)(2) and (3) (Regulation Q) and 12 CFR § 329.5(c)(2) and (3), and (e) transfers initiated by telephone that are not made pursuant to an arrangement between the consumer and the financial institution. The language in which these five types of exemptions are described is virtually identical to the corresponding language in the Act.

The Board solicits the opinions of commenters as to whether other transfers, such as those involving mutual funds or pension accounts, should also be exempted and, if so, for what reasons. Also, in connection with exemption (c) in particular, comments are invited on whether transactions within the jurisdiction of the Commodities Futures Trading Commission should also be exempted. With reference to exemption (d), comment is solicited on whether automatic transfers among other types of accounts within one institution should also be entitled to the exemption.

Section 205.3—Issuance of Access Devices. Section 205.3(a) implements § 911(a) of the Act, which prohibits the unsolicited issuance of validated EFT cards. The statutory and regulatory provisions are essentially identical, except that the regulation is structured differently for clarity, the term "access device" has been substituted for "card, code, or other means of access," and the regulation provides that a request or application for an access device may be oral or written, as presently permitted by Regulation Z with respect to credit cards. The Board solicits comment on whether such latitude should be permitted.

The public is asked to address the following alternatives relating to jointly-held accounts: (1) Whether the regulation should permit issuance of a separate access device to each party on the account when only one has applied for a device, or (2) whether the regulation should require that all account holders must request or apply for an access device before one can be issued. As the prohibition on unsolicited issuance of access devices is designed in part to protect against unauthorized transfers initiated without the consumer's knowledge, some restrictions on requests by an account holder without a similar request from other holders may be appropriate, and the Board solicits comments on which of the two

alternatives listed above (or other alternatives) is most beneficial to consumers and issuers.

Section 205.3(b) implements § 911(b) of the Act. It would permit the unsolicited issuance of an access device if four conditions are satisfied. First, the unsolicited device cannot be validated, that is, capable of being used by the consumer to initiate an electronic fund transfer. Second, the issuer must include a written disclosure of the consumer's rights and liabilities which will apply if the device is validated. Third, the issuer must also disclose that the device is not validated and how a consumer not wishing validation can dispose of the device. Fourth, the access device may be validated only upon request of the consumer and after verification of the consumer's identity. Section 205.3(b)(1) sets forth these four conditions and is almost identical to § 911(b), except that the regulation makes clear that validation of an unsolicited device can occur only in response to a request or application for validation, and not, for example, in response to a blanket authorization in an earlier application to open an ordinary checking account; however, the regulation specifies that the request may be oral or written.

Section 205.3(b)(2) specifies methods by which a consumer's identity must be verified before an unsolicited access device can be validated. It should be noted that such verification is required, under § 205.3(b)(1)(iv), only for devices that have been distributed on an unsolicited basis. The Act contains no provision specifying verification methods. However, the Board believes that issuers, in order to protect themselves from liability, should exercise care in verifying a consumer's identity before validation of an access device, and the Senate committee report indicated the committee's expectation that the Board would assure that adequate verification procedures be used by issuers (S. Rep. No. 95-915, 95th Cong., 2nd Sess. 16 (1978)). Therefore, § 205.3(b)(2) would require that the consumer's identity be verified by comparison of the consumer's signature with the issuer's account records or with another signed instrument, or by photograph, fingerprint or personal visit.

The Board solicits comment on whether the proposal on verification would unduly limit the ability of card issuers to issue unsolicited access devices or the ability of consumers to have such devices validated. In particular, since new methods of identification, such as voiceprint, may become feasible, commenters should specify what additional methods should be added, or how the proposal should otherwise be changed, so as to permit continuing innovation in this area. Comment is also solicited on whether the proposed verification requirements would provide an adequate safeguard to either consumers or issuers.

Section 205.3(b)(3) is drawn from § 911(c); it would provide that an access device is to be considered validated when the issuer takes the necessary steps to permit the consumer to initiate an electronic fund transfer. The statute and the regulation differ in that the latter emphasizes that validation is tied to some affirmative action or actions by the issuer.

The Board is aware that issuers currently use different methods of validation, and is mindful that specifying only certain means of validation may unnecessarily limit development of other methods. The Board therefore solicits comment on the need for specifying means of validation and the benefits that would be gained were the regulation to do so.

To forestall confusion, § 205.3(c) explains what the Board believes was the Congressional intent regarding the relationship between the Truth in Lending Act and the Electronic Fund Transfer Act. Truth in Lending and Regulation Z prohibit the unsolicited issuance of credit cards. Section 205.3(c) provides that the EFT Act governs the issuance of access devices and the addition of an EFT feature to an accepted credit card and that Truth in Lending governs the issuance of credit cards, combined access devices/credit cards and the addition of a credit feature to an accepted access device. There is no comparable provision in the EFT Act itself.

Section 911(b)(2) of the Act requires that any distribution of unsolicited access devices be accompanied by "a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated." Section 905 of the Act does not become effective until May, 1980, and many of the disclosures it mandates relate to substantive rights that consumers will not have until that time (e.g., right to documentation and error resolution procedures). The Board feels a significant consumer protection would be lost if some initial disclosures were no given when unsolicited devices are distributed. For that reason, § 205.3(d) would require issuers, until May 10, 1980, to give the disclosures required by § 905 when distributing unsolicited devices. These disclosures would cover the following areas:

(a) The consumer's liability for unauthorized electronic fund transfers and the address and telephone number of the person to be notified in the event of loss or theft of the access device or possible unauthorized transfer.

(b) The type and nature of transfers which the consumer may initiate, the charges imposed for such transfers, and any limits on the frequency or amount of the transfers that the consumers may make.

(c) The circumstances under which a financial institution, if one is involved, will disclose account information to third parties.

Model clauses for these disclosures are also proposed.

In addition, the regulation would require that the issuer disclose whether or not the following rights and procedures are available to the consumer:

(a) The consumer's right to stop payment of preauthorized transfers and how to do so.

(b) The consumer's right to receive documentation of transfers.

(c) A summary of the issuer's or institution's error resolution procedures.

(d) The issuer's or institution's liability to the consumer for failure to make transfers.

It should be emphasized that issuers and institutions need *not* comply with the rights and procedures disclosed under § 205.3(d)(6) through (9) as they are set forth in the Act until May 10, 1980. If they do provide them, they may be structured in any manner.

Model clauses are not proposed for the last four disclosures in § 205.3(d) because there are no uniform requirements that would make such clauses feasible.

Section 205.4—Liability for Unauthorized Transfers. This section would implement § 909 of the Act, which determines a consumer's liability for unauthorized transfers. A consumer cannot be held liable for any unauthorized electronic transfer unless the access device used for such transfer was an accepted device (as defined by § 205.12(a)) and the account issuer has provided a means of identifying the authorized user.

The Act specifies the conditions for a consumer's liability for "*an* unauthorized electronic fund transfer" (emphasis added). The Board believes that the intent of Congress with respect to such liability was identical to that contained in the unauthorized use provision in the Truth in Lending Act (§ 133(a)), that is, the consumer's liability is determined by reference to "unauthorized use" of the credit card, whether or not multiple transactions have occurred. To implement the statutory language without change would result in at least $50 liability being imposed on a consumer for *each* unauthorized transfer from a single loss or theft. Therefore, the proposed regulation (§ 205.4(a)) states that a consumer's liability would be determined by reference to any single unauthorized transfer or series of transfers that occur following loss, theft or other unauthorized use. For example, a consumer whose access device was stolen and whose account was accessed six times by the thief (and who notified the financial institution within 2 busi-

ness days after learning of the theft) would be liable for $50, rather than $300. The Board solicits comment on this construction of the statute.

A consumer's liability for unauthorized transfers would be determined in the following ways under § 205.4(b):

(a) If notification occurs within 2 business days after the consumer learns of the loss, theft or possible unauthorized use, the consumer's liability would be limited to the lesser of $50 or the amount of the unauthorized transfers occurring prior to notice.

(b) If notification does not occur within 2 business days after the consumer learns of the loss, theft or possible unauthorized transfer, and the institution establishes that losses which occurred after the close of the 2 business days could have been prevented had the consumer notified it, the consumer's liability would be limited to the sum of (i) the amount of actual losses that occurred before the close of the 2 business days (subject to a limit of $50), and (ii) the amount of actual losses that occurred after the 2 business-day period and before notice. However, overall liability would be subject to a $500 limit. If the institution could not establish that subsequent losses could have been prevented by notice, liability would be determined in accordance with (a) above.

(c) If notification does not occur within 60 days of transmittal of a periodic statement that reflects an authorized transfer, the consumer's liability may be unlimited as to any unauthorized transfers that the institution can establish could have been prevented by notice.

The regulation would provide, as does the Act, that these time periods shall be extended in the presence of extenuating circumstances, such as hospitalization or extended travel.

Section 205.4(c) implements a portion of § 909(a)(2) of the Act and provides that notice to the financial institution of loss, theft or possible unauthorized transfer may be given by the consumer by any means that are reasonably necessary to provide the institution with the pertinent information, whether or not any particular employee or agent of the institution receives the information. The Board proposes to modify the statutory provision by stating that notice may be oral or in writing.

The Board invites comment on whether an institution can require that a consumer notify a particular person or office in order to give adequate notice of loss, theft or possible unauthorized transfer or whether any reasonable, necessary steps taken by the consumer to notify the institution constitute adequate notice.

Section 205.4(d) would implement §§ 909 (c) and (d) of the Act. Section 909(c) provides that the consumer's liability for unauthorized transfers is to be determined solely in accordance with the EFT Act (rather than the Truth in Lending Act) when an electronic fund transfer also involves an extension of credit under an overdraft agreement between a consumer and a financial institution. This provision would be implemented in § 205.4(d)(1)(ii). It would provide that an agreement to extend credit if the consumer's account would otherwise fall below a specified minimum balance would be treated in the same way as an overdraft agreement; that is, an electronic fund transfer also involving an extension of credit under either type of agreement would be covered by the EFT Act. Section 205.4(d)(1)(i) would clarify that liability for an unauthorized electronic fund transfer initiated by means of an access device that is also a credit card, without any accompanying extension of credit (for example, a debit of a checking account), would be determined by the EFT Act.

Section 909(d) permits a consumer and a financial institution to agree to lesser liability for unauthorized transfers than that provided by the Act. This section is implemented by § 205.4(d)(3) of the proposed regulation.

The EFT Act does not specify which law applies (EFT or Truth in Lending) with respect to liability in the case where credit is extended, but no electronic fund transfer occurs, by means of a card or other device that has both EFT and credit card features. For purposes of this proposal, the Board takes the position, in § 205.4(d)(2), that liability in such a case would be determined under Truth in Lending and Regulation Z. The Board solicits comment on the feasibility and desirability of alternatives. For example, if the EFT Act could be said to apply in these circumstances, then uniform liability limits would operate in virtually all transactions on accounts with both EFT and credit features. Less confusing disclosures would be possible, benefiting consumers, creditors and financial institutions; on the other hand, potential consumer liability would be greater in some transactions.

Section 205.12—Definitions and Rules of Construction. The Board proposes to implement, with some modifications, all but three of the statutory definitions contained in the Act. the definition of "preauthorized electronic fund transfer" (§ 903(9) of the Act) will be implemented later. The definitions of "Board" (§ 903(3)) and "State" (§ 903(10)) do not, in the Board's opinion, need to be implemented in the regulation. If commenters believe additional definitions should be provided or proposed definitions changed, they should explain the reasons for such beliefs, and, where appropriate, suggest regulatory language.

(a) "Access device" and "accepted access device." The definition of the first term does not appear in the Act. The words "card" and "code" are not used as defined terms because EFT systems do not necessarily employ them and use of those terms in the regulation might impede technological innovation. The definition has been developed to permit convenient reference in the regulation to any of a number of different possible means of access to accounts for EFT purposes. The terms used are found elsewhere in the Act. The Board solicits comment on whether other means of electronic access to accounts should be specified in the definition.

The related definition is virtually identical to the corresponding definition in the Act. Minor changes would be made to comport with other definitions. The word "person" in the Act would be changed to "consumer" in the regulation.

(b) "Account." This definition is unchanged from that in the Act, except for deletion of a reference to the Truth in Lending Act made unnecessary by addition of the definition of "open end credit plan." The Board is aware that certain asset accounts, such as mutual funds and profit-sharing and pension accounts, can be accessed by consumers through electronic means, and believes that the definition encompasses such accounts. The Board solicits comment on whether such accounts should be exempted, and, if commenters so believe, is interested in specific reasons why such exemptions should be granted. The definition excludes occasional or incidental credit balances in an open end credit plan; comment is invited on whether all such occasional or incidental balances, whether or not in an open end credit plan, should be excluded.

(c) "Act." This definition does not appear in the Act. It is added to the regulation for purposes of convenient reference.

(d) "Business day." This definition is proposed in virtually the same form as in the Act. However, since the definition relates to both issuers and financial institutions, a day on which the offices of an issuer are open, as well as a day on which the offices of an institution are open, would be a business day. The Board is particularly interested in receiving comment on whether the regulation should provide more detail regarding what constitutes being open to the public for carrying on substantially all of a financial institution's or issuer's business functions. Comment should also address whether the regulation should establish a uniform rule as to what constitutes a business day, analogous to the rule set forth in § 226.9 of Regulation Z for rescission purposes (Monday through Saturday, exclusive of Federal holidays).

(e) "Consumer." This is the same definition as in the Act.

(g) "Electronic fund transfer" and (h) "Electronic terminal." These definitions are proposed as they appear in the Act, except that the exceptions contained in the Act's definition of "electronic fund transfer" are not set forth in the regulation as part of the definition, but instead accorded separate treatment in § 205.2

The Board is aware of EFT systems that are to some extent paper-based, i.e., transfers are initiated by a debit card, which imprints a paper instrument. That paper instrument (which may later be truncated) is the means by which payment is effected. The Board solicits comment on whether transfers under such systems are included in the definition of "electronic fund transfer."

(j) "Financial institution." The definition is unchanged from the Act, except that it also includes agents of the institutions described. The Board solicits comment on whether other persons that are subject to the definition of "financial institution" should be specified in the definition.

(k) "Issuer." This definition is not found in the Act. It is added in order to refer to all those that issue access devices and their agents and are subject to the provisions regarding issuance of such devices. Note that § 911 of the Act refers to persons that issue cards rather than financial institutions.

(m) "Unauthorized electronic fund transfer." This definition is virtually unchanged from the Act.

A number of definitions that are similar to definitions in the Truth in Lending Act and Regulation Z would be added to the regulation to facilitate reference to these terms. They are the following: (f) "Credit card," (i) "Extension of credit," and (l) "Open end credit plan." The term "extension of credit" is drawn from the definitions of "credit" and "creditor" in Regulation Z.

(3) *Model Clauses.* The Board is required by § 904(b) of the Act to issue model clauses for the disclosures required by § 905. While § 905 does not take effect until May 1980, the § 905 disclosures are required by § 911(b)(2), which becomes effective on February 8, 1979. In addition, § 911(b)(3), which also becomes effective in February, requires the Board to provide by regulation for another disclosure. Section 911(b)(2) is implemented by § 205.3(b)(1)(ii) and, for the interim period between February 1979, and May 1980, by § 205.3(d) of the proposed regulation. Section 911(b)(3) is implemented by § 205.3(b)(1)(iii) of the proposed regulation.

The proposed model clauses for optional use in complying with the disclosure requirements are contained in Appendix A. Use of the clauses that appropriately reflect the issuer's EFT program, in conjunction with other requirements of the regulation, will protect the issuer from civil and criminal liability under §§ 915 and 916 of the Act. The Board emphasizes, however, that use of these model clauses is optional; issuers are free to design their own disclosures as long as they comply with the requirements of §§ 025.3(b)(1)(iii) and (d).

Issuers may choose appropriate clauses from the alternatives available, may make changes such as deleting inapplicable words, phrases and clauses, and inserting trade names. They may also change the order in which the model clauses appear, and may use some of the model clauses, while drafting others themselves.

Section A(1) sets forth proposed model clauses for use in fulfilling the requirements of § 911(b)(3) of the Act and § 205.3(b)(1)(iii) of the proposed regulation. It provides alternative clauses. Which one an issuer uses would depend on whether the account in question is to be accessed by a card or by a code alone.

Sections A(2) through A(6) contain the proposed clauses that would comply with § 911(b)(2) of the Act and § 205.3(d) of the proposed regulation. Again, in general, alternative clauses are provided. An exception is section A(2), which contains the model disclosure of the consumer's liability for unauthorized transfers. If an issuer chooses to use this model disclosure, it must use it in its entirety and without changes in sequence or wording, except that choices or deletions may be made where brackets so indicate.

The Board solicits comment on whether these clauses are readily understandable to consumers and whether other clauses are needed.

(4) *Economic Impact Analysis of §§ 909 and 911.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of economic impact of the regulation. The analysis must consider the costs and benefits of the regulation to suppliers and users of EFT, the effects upon competition in the provision of electronic banking services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. The Board is publishing for comment an economic analysis to accompany regulations implementing §§ 911 and 909 of the Act, which become effective on February 8, 1979.

Section 205.3—Issuance of Access Devices. (a) Impact of the regulation on costs and benefits to institutions, consumers and other users. The purpose of prohibiting unsolicited distribution of validated EFT cards[2] is to protect consumers from unauthorized use of cards intecepted without the consumer's knowledge. The potential risk to the consumer of such a loss varies depending upon whether the consumer had an existing account with the card issuer. If the issuer sent a card to a consumer without an existing account, perhaps as a marketing device to gain new customers, an interception of the card could not result in any potential loss to the consumer since the consumer had not placed funds in the associated account. Thus, an important benefit, particularly to customers of existing accounts, of requiring validation separate from distribution is that it reduces losses which could result from theft of valid cards before they reach the designated customer. Such losses have been experienced both with EFT cards and credit cards. Results of a 1976 survey of 292 institutions issuing EFT cards showed that 40 institutions reported losses related to mail-intercept since first offering EFT services.[3] For these 40 institutions, there were 170 instances of loss, with average dollar loss of $291 per instance.[4] However, the dollar loss per outstanding card was low since the total number of card-holding customers for the institutions in the survey was several million. For credit cards issued prior to the 1970 prohibition on unsolicited cards, 300,000 per year were estimated to be stolen out of an estimated 200 million credit cards outstanding in the late 1960's; this figure includes mail-intercept as well as other card theft.[5]

The regulation does permit the distribution of unsolicited, but unvalidated cards (§ 205.3(b)). The most general effect of this provision will be seen in the number of accepted cards. Although the impact on the number of accepted cards cannot be quantified, experience of the credit card industry, in the years prior to the prohibition of unsolicited cards under Regulation Z, can give an indication of the bounds of acceptance rates relative to either a more or less restrictive regulation. Unsolicited credit card distribution resulted in a much higher acceptance and usage rate than distribution based on solicitation of consumer requests for cards. The Marine Midland experience in 1966 points out these differences; 33,357 promotional mailings resulted in only 221 applications for credit cards (less than one percent)

[2] The term "card" in this economic impact analysis refers to any access device as defined in § 205.12(a) of the regulation.

[3] Linda Fenner Zimmer, "Cash Dispensers and Automated Tellers: Statistical Data and Analysis with Selected Case Histories." Fourth Status Report (Park Ridge, N.J.: August 1977), p. 222.

[4] *Ibid.* p. 224.

[5] Sylvia Porter as quoted from *The Washington Star* in U.S. Congress. "Unsolicited Credit Cards," Hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency, Senate, 91st Congress, 1st Session, 1969, p. 243.

while 731 direct mailings of cards resulted in 19 percent usage in a short period and 99 percent retention. Based on this experience, it is expected that allowing distribution of unsolicited, but unvalidated, EFT cards will result in a larger card base and more chance of acceptance by proprietors than would the complete prohibition of distribution of unsolicited cards. On the other hand, the card base and acceptance level is expected to be lower than would obtain if there were no prohibition on sending unsolicited, validated cards.[6]

The regulation requires a two-step procedure for distributing and validating cards. This requirement will increase administrative costs to issuers through additional postage and handling.

An additional potential cost to the issuers would result from the paperwork and legal fees connected with the disclosure requirement (§ 205.3(b)(1)(ii)).[7] However, since the Board is providing model clauses, any additional costs can be minimized.

Another potential cost of the regulation is related to the verification procedures (§ 205.3(b)(b)(2)). By limiting identity verification methods to signature or other signed instruments, photograph, fingerprint, or personal visit, the regulation may reduce incentives for innovation in developing or applying new technology in verification techniques. The Board solicits comment on whether there are presently available or being developed identity verification procedures which are not encompassed by § 205.3(b)(2) and whether the regulation would discourage innovation along these lines.

(b) Effects of the regulation upon competition in the provision of electronic transfer services among large and small financial institutions. A critical factor influencing merchant acceptance of EFT cards is the size of the outstanding card base. Thus, card issuers attempt to use marketing strategies that will achieve a high acceptance ratio for the lowest cost. The credit card experience in the late 1960's showed that the institutions' most successful strategy in achieving a large card base was large mailings of unsolicited cards. By allowing the distribution of unsolicited (although unvalidated) cards, the regulation does not restrict entry potential for new firms as severely as was the case in the credit card industry when distribution of unsolicited cards was prohibited. As a result of this prohibition, companies that had not already entered the industry on a large scale were at a major disadvantage compared to the large-scale participants. Entry into the industry was difficult and competition was restrained. Thus, § 205.3 is expected to have the effect of maintaining the present level of competition because it does not put small institutions at a competitive disadvantage. In addition, competition could increase since the regulation does not contain restrictions on sending cards to consumers other than present customers.

(c) Effects of the regulation on availability of electronic transfer services to different classes of consumers, especially low-income. To the extent that cards are sent only to institutions' present holders of consumer deposit accounts, the effect of § 205.3 on low-income consumers will be that the distribution of the available EFT services will be approximately the same as the distribution of account holders. Table I presents data on financial assets by income class. It can be seen that usage of depository services rises with income. However, lower usage of depository services by lower-income consumers may be for a variety of reasons, one of which may be lack of availability. The Board solicits comment on whether a potential customer of a financial institution must be employed and/or have a minimum income to qualify for any of the following types of accounts; (i) demand deposit, (ii) savings deposit, (iii) time deposit, (iv) ATS (Automatic Transfer Service) account, and (v) EFT (Electronic Fund Transfer) account.

Financial institutions might not send unsolicited cards to all present account holders. To the extent that such cards represent a costly non-price means of attracting or maintaining deposits, institutions may send cards only to high-volume customers, i.e., to reduce the cost per dollar of account balance. In such an event, the distribution of EFT services would evolve away from low-income to higher-income customers. The Board solicits comment on whether institutions plan to limit unsolicited mailings of EFT cards to a subset of their present deposit customers.

Section 205.4—Conditions of liability of consumer for unauthorized transfers. It is important to realize that the liability provisions of § 205.4 will have no impact on either consumers or institutions if the provisions are not a constraint on financial institutions. That is, if the financial institutions would normally assume more liability than is required by the regulation, then the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation is relevant only if the liability provisions are more restrictive than those institutions would otherwise assume.

(a) Impact of the regulations on costs and benefits to institutions, consumers and other users. The total net cost or benefit to society of the regulation is related to the expected dollar loss resulting from fraud or unauthorized use of debit cards. The impact of § 205.4 on the aggregate loss may be felt in three ways, two of which are benefits and the third a cost. First, by building in incentives for consumers to report quickly loss or theft of a card or discovery of unauthorized use, the regulation loss or theft of a card or discovery of unauthorized use, the regulation should reduce the number of unauthorized transactions. Second, the relatively long period which consumers have in which to report unauthorized use before they assume full liability for loss will increase issuers' incentives for tight security systems. Third, however, is the possibility of increased unauthorized use because the regulation does not hold the consumer specifically liable for negligence. For example, a customer's liability for unauthorized use of a card does not increase if the customer leaves the identification number on the card.

Limited data on actual loss experience for unauthorized use of EFT and credit cards indicate that, while not insignificant, these losses have not been inordinately high. For example, an Interbank ATM (Automated Teller Machine) loss survey of 125 banks showed that on transactions volume of 10,486,000 and dollar volume of $41.0 million, the total annual fraud loss was $290,000, less than one per cent of dollar volume and represented less than $.03 per transaction.[8] A payment Systems, Inc. survey of officials at 45 financial institutions offering card-activated EFT services estimated that annual average fraud loss per active card was about $.10 compared to an average of about $.03 per card for the total card base. *Nilson Reports* estimates that total credit card fraud loss for 1978 will be $62.8 million on total transactions volume of $44 billion, which is less than two-tenths of a per cent of dollar volume. Additional data would be useful. The Board solicits comment on what per cent, number and dollar volume of EFT type ac-

[6] Board of Governors of the Federal Reserve System, *Bank Credit-Card and Check-Credit Plans*, July 1968, p. 27.

[7] The regulation results in two sets of disclosure requirements, one during the transition period under § 205.3(d) of the regulation and the second when § 905 of the Act goes into effect in May 1980. This may add to issuers' costs.

[8] John A. Colin, *What's New in Money-Matics?* Remarks made at the Bank Administration Institute Eighth National Security Conference (Atlanta, Ga.: n.p.; 1977) quoted in Veronica M. Bennett, "Card Fraud and Security in EFT Systems," (Atlanta: Payment Systems, Inc., White Paper, September 7, 1978), p. 13.

[9] Bennett, P. 17.

[10] Spencer Nilson, editor of *Nilson Reports*, during a telephone interview, November 1978.

counts have experienced unauthorized use. How many of these result from loss of card or theft of card? How many result from computer fraud? What has been the average loss, in dollars, per account? Maximum loss? Similarly, what has been the experience for credit cards? What has been the experience for unauthorized use of checks?

In addition to having an effect on the total cost to society of EFT loss, the regulation affects the distribution of the burden of costs between institutions and their customers. This distribution depends on the timing of reporting; the longer the time the consumer takes to report the loss, the more liability the consumer assumes. In order to assess the impact of the regulation on the distribution of loss, reporting-time experience of loss for EFT and credit cards is necessary. The Board solicits comment on what has been the range of an average time span between customers' learning of theft or loss of EFT cards or unauthorized use of their EFT accounts and their reporting it to the card issuer. Similarly, what has been the range of an average reporting time for credit card and check theft, loss or unauthorized use?

The assessment of the social equity of the distribution of costs and benefits of the regulation between institutions and their customers depends on how the ability to assume the loss is weighted. For example, by virtue of its size, income and tax position, a large bank is probably better able to assume a given loss than a low-income consumer. However, such an assessment is highly subjective. It should be noted that the regulation does not fix the distribution of the costs but rather sets the limits to which the institution can shift the burden to consumers. Relatively high potential liability for consumers may discourage usage which could result in a cost to consumers if EFT is cheaper than alternatives. However, competition could encourage institutions to bear more of the liability than required. (This is discussed further in the next section.)

(b) Effects of the regulation upon competition in the provision of electronic transfer services among large and small financial institutions. The conditions of liability imposed by § 205.4 set a minimum liability standard that must be assumed by all financial institutions offering EFT services. This means that all institutions are treated equally in terms of a floor on requirements. However, competition may lead banks to assume more liability than the regulation requires and thus reduce costs to the consumer and increased consumer acceptance. Results of a 1978 ATM Security Survey by the American Bankers Association indicate that at present banks do not have standard liability provisions.[11] The respondents to the survey (approximately 135 banks, half of which had deposits greater than $1.0 billion and only six percent of which had deposits less than $100 million) established liability as follows: (i) case-by-case basis—55.8 per cent, (ii) bank absorbs all losses—24.3 percent, (iii) set dollar limit—9.9 percent, (iv) customer responsible for all losses until loss reported—8.1 percent.

Additional information on the ability of small and large financial institutions to assume liability and their experience to date on liability provisions would be useful. The Board solicits comment on the impact of unauthorized use of EFT systems on profitability of the system for small and large financial institutions. In addition, the Board solicits comment on the extent to which small and large institutions' present liability requirements are more or less restrictive than the regulation.

A major difficulty in analyzing the impact of the regulation on competition between small and large financial institutions is that the impact depends very much on the nature of the EFT systems involved. Thus, the effects of the regulation depend on such considerations as whether widely-accepted franchise systems develop, whether systems are national or regional, or whether they are on or off-line. For example, systems that are widespread or off-line have a greater chance for unauthorized use. The regulation could have a significant impact on the structure of the industry if small proprietary systems cannot afford the regulation's liability requirements.

Even without making predictions about the manner in which EFT systems will evolve, some general observations on the impact of the regulation can be made. (1) First, the regulation will have the least impact on those institutions and franchise systems that are best able to assume the liability and incur per unit costs related to determining liability according to the regulation. To the extent that large systems and institutions benefit from scale and scope economies, they would be less affected than small institutions. (2) In addition, larger institutions may enjoy economies of scale in purchasing security systems, thereby having a lower loss rate and more consumer confidence in their system than small instititions. (3) On the other hand, to the extent that the regulation shifts the burden to the institutions, small institutions may avoid some of the costs since they are more likely to have a close relationship with customers and may therefore be better able to prescreen and educate them. (4) Finally, small institutions are less likely to be in large metropolitan areas. Therefore, they would tend to be in areas in which there is less crime and in which there is a greater likelihood that proprietors would recognize customers. The Board solicits comment on these four issues. In addition, the Board solicits comment on what will be the costs related to establishing that the consumer has notified the issuer of loss "2 business days after learning of the loss or theft of the access device or possible unauthorized transfer" (§ 205.4(b)(1)).

(c) Effects of the regulation on availability of electronic transfer services to different classes of consumers, especially low-income. In order to evaluate the effects of § 205.4 availability of EFT services to different classes of consumers, it is useful to look at present usage rates of avialable EFT systems by income class. Data from the Air Force showing use of automatic payroll deposit by income level of active duty personnel can be seen in Table II. Similar data for employees of the Board of Governors of the Federal Reserve System can be seen in Table III. The data indicate that usage of available systems increases with income level. A 1976 consumer panel survey in South Carolina shows reasons that households have chosen not to use ATMs, by income (see Table IV).[12] The two major reasons for not using ATMs were that the service was not needed or was not available; there is no apparent relationship between either the need for or availability of ATMs and income level. Thus, the two sets of data suggest that even when EFT services are available to all income classes, usage rate varies by income.

The regulation may affect both usage and availability of EFT services to classes of consumers, especially low-income consumers. In this respect, the impact of the regulation will probably be related to the amount of potential liability and the complexity of the liability provisions. The amount of potential liability as a percent of consumer assets is significantly higher for low-income consumers than for higher-income consumers.[13] However, if a customer has no overdraft privilege, liability is generally no greater than the amount of funds in the customer's account. As can be seen in Table V, only a small proportion of lower-income families have more than

[11] American Bankers Association, Payments System Planning Division, "Results of an ATM Security Survey," n.p., June 1978.

[12] The panel surveyed includes urban households with annual income greater than $6,000.

[13] In contrast, at present, consumers bear no liability for check forgery or fraud and a maximum of $50 for unauthorized use of a credit card.

$500 in a checking or savings account. Thus, the dollar value of potential loss through unauthorized use for low-income consumers is relatively low.

A final consideration is that clear understnding of EFT, the liability involved, and the information in the periodic statement involves some degree of familiarity with financial data. To the extent that low-income consumers are not financially sophisticated, they would be less likely to understand their liability and their periodic statements, and to discover loss or theft within a given time period and would be more likely to put their identification number on the card than high-income consumers. Therefore, they would have a higher probability of a loss, as a percentage of their assets, and possibly in absolute terms, than higher-income consumers. As a result, low-income consumers may be discouraged from using EFT because of relatively complicated liability requirements. However, since relatively high liability is borne by the consumer, financial institutions may be more willing to offer EFT services to low-income consumers because the institutions are protected to some extent from ignorance on the part of consumers, i.e., the consumer bears total liability if the unauthorized use is not reported within 60 days of transmittal of the periodic statement showing the loss and the issuer can prove that the loss would not have occurred if reporting had been within the 60 days.

TABLE I

Families without savings, or checking accounts or liquid assets by family income, 1977*
(percentage distribution)

Family Income ($)	No Savings Accounts	No Checking Accounts	No Liquid Assets
Less than 3000	57.2	44.7	30.2
3,000 - 4,999	52.7	49.7	33.5
5,000 - 7,499	38.3	33.8	15.7
7,500 - 9,999	33.3	23.8	9.9
10,000 - 14,999	21.4	15.2	5.6
15,000 - 19,999	11.7	11.3	3.4
20,000 - 24,999	10.4	4.4	b/
25,000 and more	5.9	2.0	.6

* Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-7, 21-8, and 21-9.

a/ Liquid assets include savings accounts, certificates of deposit, checking accounts, and U.S. Government Bonds.

b/ Less than one half of one percent.

TABLE II

Air Force Active Duty Personnel
Usage of Automatic Payroll
Deposit by Income*
1978

Annual a/ Income ($)	Number of Employees	Employees Using Automatic Payroll Deposit	
		Number	Percent
Less than 7,500	0		
7,500 - 9,999	168,611	77,297	45.8
10,000 - 11,999	142,981	97,400	68.1
12,000 - 14,999	96,107	72,931	75.9
15,000 - 19,999	78,858	64,203	81.4
20,000 - 24,999	41,106	36,717	89.3
25,000 and over	41,876	37,876	90.5

* Source: Accounting and Finance Center, Department of the Air Force.

a Dollar income equals regular military compensation rates plus a factor to account for bonuses, special pay, and special allowances.

TABLE III

Employees of the Board of Governors
of the Federal Reserve System
Usage of Automatic Payroll*
1978

Annual Income ($) a/	Number of Employees	Employees Using Automatic Payroll Deposit	
		Number	Percent
Less than 7,500	21	1	4.8
7,500 - 9,999	59	5	8.5
10,000 - 11,999	133	29	21.8
12,000 - 14,999	262	109	41.6
15,000 - 19,999	312	179	57.4
20,000 - 24,999	163	103	63.2
25,000 and over	530	433	81.7

* Source: Board of Governors of the Federal Reserve System.

a/ This includes some part-time employees.

TABLE IV

Selected Reasons Why Households
Have Not Used Automated
Teller Machines by Income* (Per Cent)

Income of Total Household	Unsafe, Poor Lighting & Local	Not Needed; Other Facilities Available	Not Available	Suspicious of System	Encourages Overspending	Never Heard of Them	Misc.
Under $7,000	0	43.8	33.3	8.3	0	10.4	4.2
$ 7,000-10,999	1.3	32.9	44.7	14.5	0	2.6	3.9
$11,000-15,999	0.6	37.3	39.9	15.8	0	3.8	2.5
$16,000-20,000	0.9	47.9	38.5	8.5	2.6	1.7	0
Over $20,000	0.5	47.3	37.4	12.6	0.5	1.4	0.5

* Source: Olin S. Pugh and Franklin J. Ingram, "EFT and the Public," The Bankers Magazine 161 (March-April 1978): p. 45, table 4.

TABLE V

Percentage Distribution of
Checking & Savings Accounts
1977*

	Amount of checking accounts (dollars)								
	None	1-99	100-499	500-999	1,000-1,999	2,000-4,999	5,000-9,999	10,000 and more	Total
Family income (dollars)									
Less than 3,000	44.7	15.3	22.7	6.0	6.0	4.0	.7	.7	100
3,000 - 4,999	49.7	14.5	26.8	3.4	2.8	2.8	a/	a/	100
5,000 - 7,499	33.8	16.9	29.0	10.6	5.8	2.4	1.0	.5	100
7,500 - 9,999	23.8	21.0	31.4	12.4	5.7	3.3	1.9	.5	100
10,000 - 14,999	15.2	19.3	38.3	13.1	6.9	4.8	1.4	.9	100
15,000 - 19,999	11.3	16.6	36.9	12.5	12.8	6.3	2.8	.9	100
20,000 - 24,999	4.4	10.3	42.9	16.3	14.7	7.5	2.4	1.6	100
25,000 and more	2.0	7.4	19.2	20.9	23.2	18.3	4.0	4.9	100

	Amount of savings accounts (dollars)										
	None	1-199	200-499	500-999	1,000-1,999	2,000-4,999	5,000-9,999	10,000-14,999	15,000-24,999	25,000 or more	Total
Family income (dollars)											
Less than 3,000	57.2	10.5	8.6	2.0	5.9	5.3	3.9	1.3	3.9	1.3	100
3,000 - 4,999	52.7	9.6	9.6	5.4	5.4	6.6	5.4	1.8	1.2	2.4	100
5,000 - 7,499	38.3	10.7	13.8	7.1	7.1	13.3	3.6	1.5	2.0	2.6	100
7,500 - 9,999	33.3	12.6	15.0	7.7	6.3	13.0	2.4	3.4	1.0	5.3	100
10,000 - 14,999	21.4	11.6	15.3	8.9	10.3	11.6	6.9	4.7	4.2	5.2	100
15,000 - 19,999	11.7	12.0	14.0	11.7	10.4	17.9	8.8	5.8	3.2	4.5	100
20,000 - 24,999	10.4	4.1	10.8	9.1	14.9	21.2	17.0	4.1	5.4	2.9	100
25,000 and more	5.9	2.1	4.7	4.7	7.0	18.2	14.1	15.8	13.8	13.8	100

* Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-8 and 21-9.

a/ Less than .5 percent

(5) Pursuant to the authority granted in Pub. L. 95-630, Title XX, § 904 (November 10, 1978), the Board proposes to adopt Regulation E, 12 CFR Part 205, as follows:

PART 205—ELECTRONIC FUND TRANSFERS

Sec.
205.1 Scope and purpose.
205.2 Exempted transfers.
205.3 Issuance of access devices.
205.4 Conditions of liability of consumer for unauthorized transfers.
205.12 Definitions and rules of construction.

APPENDIX A—MODEL DISCLOSURE CLAUSES

AUTHORITY: Pub. L. 95-630, Title XX, Sec. 904 (November 10, 1978).

205.1 Scope and purpose.

In November 1978, Congress enacted the Electronic Fund Transfer Act which establishes the basic rights, liabilities and responsibilities of consumers who use electronic money transfer services and of depository and other financial institutions that offer such services. As directed by Congress, this regulation is intended to carry out the purposes of the Act, including primarily the protection of individual consumers engaging in electronic transfers to or from their accounts at financial institutions. Electronic transfers may be used by consumers for the same purposes as paper checks. The principal difference is that, whether for deposit or payment, checks are physically transported. In electronic fund transfer systems, the payment instructions are transmitted by electronic means and standardized computer techniques common to bank deposit accounting. Electronic systems may be used by consumers to transfer funds to and from their accounts in the following ways:

(a) *Electronic deposit of funds to an account.* Consumers may instruct employers and others making regular payments to them to have funds deposited directly into their accounts. This service may be used for depositing wages, social security benefits, dividends, and other types of income payments. In a direct deposit arrangement, the originator of the payment (employer, Social Security Administration, etc.) directs its financial institution to transfer funds electronically to the consumer's financial institution for deposit in the consumer's account. Direct deposit services are begun when a consumer signs an agreement authorizing the originator to send funds directly to the consumer's account in a bank or other financial institution that offers direct deposit services. Automated teller machines are also used for depositing funds. Consumers may deposit cash or checks in these machines which generally are available for use 24 hours a day. Today most of them are located at financial institutions, supermarkets and airports. To use these machines, a customer is usually issued a card and a special code, called a "personal identification number," by the financial institution.

(b) *Transferring and withdrawing funds from an account.* Electronic facilities provide consumers with alternative ways to withdraw cash, to pay bills and to make purchases from merchants.

(1) Cash withdrawals. Consumers may withdraw funds from their accounts and obtain cash by using automated teller machines. Also, consumers may ordinarily obtain cash in addition to goods and services when using the point-of-sale systems described below.

(2) Bill payment. Two types of electronic fund transfer services may be used by a consumer to pay bills. First, the consumer may preauthorize merchants and creditors to draw funds from the consumer's account, or secondly, the consumer may direct the financial institution or a third party to pay bills. Under a preauthorized system, a consumer directs a merchant in writing to debit or draw funds from his or her account on a given date in an amount sufficient to pay a bill. Preauthorized debits usually are used to pay recurring bills of a fixed amount, such as insurance premiums, mortgage payments or rent. A consumer may also authorize payment in this manner for variable amount bills, such as credit card and utility bills. Where variable amount bills are paid by preauthorized debits, consumers usually receive notice from merchants as to the amount of the bill and ordinarily a period of time elapses between the date the bill is sent to the consumer and the date the account is charged. When the financial institution provides a bill-payment service, it usually furnishes the consumer with a personal identification code. This code is used when requesting the financial institution to charge the consumer's account and pay a bill. Instructions to pay the bill may be given in writing, verbally by the consumer, or by some other means, such as through a touch-tone telephone using a prearranged coding scheme.

(3) Paying for purchases. Consumers may pay for goods and services at the point of purchase by using electronic fund transfer rather than with a check, cash or credit card. This is usually done through use of a card similar in appearance to a credit card. The card identifies the consumer's financial institution and account number in machine-readable form. At the time of purchase, as the card and the proper dollar amount are entered into a machine, the consumer's account is debited electronically and the merchant's account credited. This is done by an electronic transmission of messages between the consumer's and the merchant's banks. Systems which provide these capabilities are known as "point-of-sale" systems.

(c) *Protections under the regulation.* The Electronic Fund Transfer Act becomes effective in two parts. The first part, which will become effective on February 8, 1979, limits the liability of a consumer for electronic fund transfers that were not authorized by the consumer. It also places limitations on the distribution of debit cards and other means of access. Certain disclosures must be made if the card or other means of access was not requested by the consumer. On May 10, 1980, the remaining provisions of the law will become effective. Of particular significance among the provisions becoming effective in 1980 are those having to do with the disclosure of terms and conditions upon which a financial institution offers electronic transfer services, and the content of the periodic statement which sets forth the transactions (deposits to and withdrawals from the account). Taken together these disclosures require financial institutions to provide details of electronic service offerings and transfers that are not presently required for check transfers. Various provisions of the regulation set forth the terms and conditions for opening an account for electronic fund transfers. The regulation also will provide requirements concerning deposits to or payments from an account. These requirements are outlined as follows:

(1) Opening an account: Disclosures concerning account terms (including fees and privacy rights) are required to be made to consumers.

(2) Continuing requirements:

(i) A periodic account statement must be issued that contains information describing the transactions and identifying the parties to whom and from whom funds are paid.

(ii) The consumer's liability for unauthorized transfers is limited, in general, based on the time notice of loss, theft or unauthorized transfer is given to the financial institution.

(iii) Error resolution procedures must be provided by financial institutions.

(3) Deposits to accounts (credits):

(i) For deposits that are made directly to an account by a third party, notice of receipt or non-receipt of the deposit must be provided to the consumer.

(ii) Receipts must be made available for all deposits made by consumers at electronic terminals.

(4) Payments from accounts (debits):

(i) Preauthorized payments must be authorized by the consumer in writing. For some preauthorized payments that vary in amount, the financial in-

stitution must provide advance notice to the consumer. Also, stop payment rights apply to preauthorized payments.

(ii) Receipts must be made available for all payments, including cash withdrawals, initiated by consumers at electronic terminals.

§ 205.2 Exempted transfers.

This regulation does not apply to the following:

(a) *Check guarantee or authorization services.* Any service which guarantees payment or authorizes acceptance of a check, draft or similar paper instrument and which does not directly result in a debit or credit to a consumer's account.

(b) *Wire transfers.* Any wire transfer of funds for a consumer through the Federal Reserve Communications System, Bankwire network or similar network that is used predominantly for bank-to-bank or business-to-business transfers.

(c) *Certain securities or commodities transfers.* Any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission.

(d) *Automatic transfers from savings to demand deposit accounts.* Any automatic transfer from a savings account to a demand deposit (checking) account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed-upon minimum balance in the consumer's checking account as permitted by 12 CFR Part 217 (Regulation Q) and 12 CFR Part 329.

(e) *Certain telephone-initiated transfers.* Any transfer of funds which (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not pursuant to a prearranged plan under which periodic or recurring transfers are contemplated.

§ 205.3 Issuance of access devices.

(a) *General rule.* An issuer may issue an access device to a consumer only:

(1) In response to an oral or written request or application therefor;

(2) As a renewal of an accepted access device; or

(3) In substitution for an accepted access device, whether issued by the initial issuer or a successor.

(b) *Exception.* (1) Notwithstanding the provisions of § 205.3(a), an issuer may distribute an access device to a consumer on an unsolicited basis if:

(i) The access device is not validated;

(ii) The distribution is accompanied by a complete disclosure, in accordance with § 205.5, of the consumer's rights and liabilities which will apply if the access device is validated;

(iii) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device, if validation is not desired; and

(iv) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity.

(2) A consumer's identity shall be verified by comparison of the consumer's signature with the issuer's account records or another signed instrument, or by photograph, fingerprint or personal visit.

(3) An access device shall be considered validated when the issuer has performed any procedure necessary to permit the access device to be used by the consumer to initiate an electronic fund transfer.

(c) *Relation to Truth in Lending.* The Act and this regulation govern the issuance of access devices and the addition to an accepted credit card of the capability to initiate electronic fund transfers. The issuance of credit cards, the addition of a credit feature to an accepted access device and the issuance of credit cards which are also access devices are governed by the Truth in Lending Act and 12 CFR Part 226 (Regulation Z), which prohibit their unsolicited issuance.

(d) *Transition provision.* Until May 10, 1980, an issuer may satisfy the disclosure requirements of § 205.3(b)(1)(ii) by disclosing the following terms in writing in readily understandable language:

(1) The consumer's liability under § 205.4 for unauthorized electronic fund transfers and, at the issuer's option, notice of the advisability of prompt reporting of any loss, theft or unauthorized transfer.

(2) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected.

(3) The type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(4) Any charges for electronic fund transfers or for the right make such transfers.

(5) The circumstances under which the financial institution, if one is involved, will in the ordinary course of business disclose information concerning the consumer's account to third parties.

(6) Whether or not the consumer has the right to stop payment of a preauthorized electronic fund transfer and, if so, the procedure to initiate such a stop payment order.

(7) Whether or not the consumer has the right to receive documentation of electronic fund transfers.

(8) Whether or not the financial institution or issuer has error resolution procedures and, if so, a summary of those procedures and the consumer's rights under them.

(9) Whether or not the financial institution or issuer will be liable to the consumer for its failure to make transfers.

The procedures and rights which the financial institution or issuer is required to disclosure under § 205.3(d)(6) through (9) need not comply with the requirements of the Act until May 10, 1980.

§ 205.4 Conditions of liability of consumer for unauthorized transfers.

(a) *General rule.* A consumer shall not be liable for any unauthorized electronic fund transfers involving the consumer's account unless the access device utilized for such transfers was an accepted access device and the issuer has provided a means whereby the user can be identified as the person authorized to use it, such as by signature, photograph or fingerprint or by electronic or mechanical confirmation.

(b) *Amount of consumer's liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of transfers shall be determined as follows:

(1) If the consumer notifies the financial institution within 2 business days after learning of the loss or theft of the access device or possible unauthorized transfer,[14] the consumer's liability shall not exceed the lesser of $50 or the amount of money or value of property or services obtained in unauthorized electronic fund transfers prior to notice to the financial institution under § 205.4(c).

(2)(i) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device or possible unauthorized transfer, and the institution establishes that the transfers would not have occurred but for the failure of the consumer to notify the institution within that time, the consumer's liability shall be:

(A) The lesser of $50 or the amount of money or value of property or services obtained in unauthorized electronic fund transfers prior to the close of the 2 business days, and

[14] Note that the consumer may learn of possible unauthorized electronic fund transfers from examination of a periodic statement.

(B) The amount of money or value of property or services obtained in unauthorized electronic fund transfers which occur following the close of 2 business days after the consumer learns of the loss or theft of the access device or possible unauthorized transfer and prior to notice to the financial institution under § 205.4(c). The consumer's liability under § 205.4(b)(2)(i) shall not exceed $500.

(ii) If the institution fails to establish that the unauthorized transfers would not have occurred but for the failure of the consumer to notify the institution, the consumer's liability shall be determined in accordance with § 205.4(b)(1).

(3) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer which appears on the statement, the consumer may be liable for the amount of any unauthorized transfer which the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution.

If the delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(c) *Notice to financial institution.* For purposes of § 205.4, a consumer notifies a financial institution by taking such steps as may be reasonably necessary to provide the financial institution with the pertinent information, orally or in writing, whether or not any particular officer, employee or agent of the financial institution does in fact receive the information. Notice shall also be considered given when the financial institution becomes aware of circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected.

(d) *Determination of liability in certain transfers.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with § 205.4 if

(i) The transfer was initiated by use of an access device which is also a credit card, or

(ii) The transfer also involves an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer when the consumer's account is overdrawn or to maintain an agreed-upon minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

(3) A financial institution and a consumer may agree that the consumer's liability for unauthorized electronic fund transfers will be less than would be determined by § 205.4 of the regulation.

§ 205.12 Definitions and rules of construction.

For the purposes of this regulation, the following definitions and rules of construction apply, unless the context indicates otherwise:

(a) *"Access device"* means a card, code or other means of access to a consumer's account, or any combination thereof, for the purpose of initiating electronic fund transfers.

An *"accepted access device"* means an access device which the consumer to whom such access device was issued (1) has requested and received or (2) has signed or (3) has used or (4) has authorized another to use, for the purpose of transferring money between accounts or of obtaining money, property, labor or services.

(b) *"Account"* means a demand deposit, savings deposit or other consumer asset account (other than an occasional or incidental credit balance in an open end credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family or household purposes. The term does not include an account held by a financial institution pursuant to a bona fide trust agreement.

(c) *"Act"* means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act).

(d) *"Business day"* means any day on which the offices of the financial institution or the issuer are open to the public for carrying on substantially all business functions.

(e) *"Consumer"* means a natural person.

(f) *"Credit card"* means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor or services on credit.

(g) *"Electronic fund transfer"* means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephone or computer or magnetic tape and which orders, instructs or authorizes a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(h) *"Electronic terminal"* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines and cash dispensing machines.

(i) *"Extension of credit"* means the right granted by a creditor to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor, in which the debt is payable by agreement in more than four installments, or does or may require payment of a finance charge, whether in connection with loans, sales of property or services or otherwise.

(j) *"Financial institution"* means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes the agent of such an institution.

(k) *"Issuer"* means any person who issues an access device, or the agent of such person with respect to such access device.

(l) *"Open end credit plan"* means an extension of credit on an account pursuant to a plan under which (1) the creditor may permit the consumer to make purchases or obtain loans from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide; (2) the consumer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(m) *"Unauthorized electronic fund transfer"* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include any electronic fund transfer (1) initiated by a person other than the consumer who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any other person acting in concert with the consumer, or (3) which constitutes an error committed by the financial institution.

(n) Captions and catchlines used in this regulation are intended solely as aids to convenient reference, and no inference as to the intent of any provision of this regulation may be drawn from them.

APPENDIX A—MODEL DISCLOSURE CLAUSES

This appendix contains model disclosure clauses for optional use by financial institutions and issuers to facilitate compliance with the disclosure requirements of §§ 205.4 (b) and (d) and § 205.5 of the regulation. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation protects financial institutions and issuers from liability under §§ 915 and 916 of the Act to the extent that they accurately reflect their electronic fund transfer services.

Financial institutions and issuers need not use all the provided clauses, but may use clauses of their design in conjunction with the model clauses. Words and phrases in parentheses are alternative in nature and the inapplicable portions of those words or phrases should be deleted. Financial institutions and issuers may make alterations or substitutions of a technical nature (e.g., substitution of a trade name for the word "card," deletion of inapplicable services) in the clauses in order to reflect the services offered.

SECTION A(1)—DISCLOSURE THAT ACCESS DEVICE IS NOT VALIDATED AND HOW TO DISPOSE OF DEVICE IF VALIDATION IS NOT DESIRED (§ 205.3(b)(1)(iii))

(a) *Accounts accessed by cards.* You cannot use the enclosed card until we have validated it. If you do not want the card, destroy it at once.

[Issuer may insert validation instructions here.]

(b) *Accounts accessed by codes.* You cannot use the enclosed code until we have validated it. If you do not want the code, destroy this notice at once.

[Issuer may insert validation instructions here.]

SECTION A(2)—DISCLOSURE OF CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS AND OPTIONAL DISCLOSURE OF ADVISABILITY OF PROMPT REPORTING (§ 205.3(d)(1))

(a) *Liability disclosure.* (Contact us AT ONCE if you believe your (card) (code) has been lost or stolen or money is missing from your account. If you contact us within 2 business days, you can lose no more than $50 if someone used your (card) (code) without your permission.) (If you believe your (card) (code) has been lost or stolen or if you think money is missing from your account, and you contact us within 2 business days after learning of the loss, you can lose no more than $50 if someone used your (card) (code) without your permission.)

If someone used your (card) (code) without your permission, you could lose as much as $500 if you do NOT contact us within 2 business days after learning of the loss and we can prove that we could have prevented the losses if you had contacted us.

Also, if your monthly statement shows transfers that you did not make, and you do not contact us within 60 days after the statement was mailed to you, you may not get back any money lost after that time if we can prove that your contacting us would have prevented those losses.

If something prevents your contacting us (such as travel or hospitalization), the time periods may be extended.

SECTION A(3)—DISCLOSURE OF TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER (§ 205.4(d)(2))

(a) *Address and telephone number.* If you believe your (card) (code) has been lost or stolen or that an unauthorized transfer from your account has occurred or may occur, call or write:

[Name of financial institution, issuer or agent]
[Address]
[Telephone number]

SECTION A(4)—DISCLOSURE OF TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS (§ 205.3(d)(3))

(a) *Account access.* You may use your (card) (code) to:

(1) Withdraw cash from your (checking) (or) (savings) account.

(2) Deposit money in your (checking) (or) (savings) account.

(3) Make payments from your (checking) (or) (savings) account in the amounts and on the days you request.

(4) Make periodic payments from your (checking) (or) (savings) account, such as your mortgage payment.

(5) Transfer funds between your checking and savings accounts in the amounts you request.

(6) Learn the balance(s) in your (checking) (or) (savings) accounts.

(7) Pay for purchases at merchants that have agreed to accept the (card) (code).

(b) *Limitations on frequency of transfers.*

(1) Automated teller machines. Cash withdrawals from our automated teller machines are limited to [insert number, e.g., 3] each [insert time period, e.g., week].

(2) Telephone bill-payment services. Your telephone bill-payment service can be used to authorize payment for [insert number] bills each ([insert time period]) (telephone call).

(c) *Limitations on dollar amounts of transfers.*

(1) Automated teller machines. You may withdraw up to [insert dollar amount] from our automated teller machines each ([insert time period]) (time you use the (card) (code)).

SECTION A(5)—DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.3(d)(4))

(a) *Per transfer charge.* There will be a charge of [insert dollar amount] for each transfer you make using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service).

(b) *Fixed charge.* There will be a charge of [insert dollar amount] each [insert time period] for our (automated teller machine service) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Minimum balance charge.* There will be no charge for use of our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service), unless the average monthly balance in your (checking account) (savings account) (accounts) falls below [insert dollar amount]. If it does, the charge will be [insert dollar amount] each (transfer) ([insert time period]).

SECTION A(6)—DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.3(d)(5))

(a) *Account information disclosure.* We will not disclose information about your account or the transfers you make to third parties, except:

(1) as necessary to complete transfers.

(2) to verify the existence and standing of your account with us upon the request of a third party, such as a credit bureau.

(3) to comply with government agency or court orders.

(4) [insert notice required by the Right to Financial Privacy Act of 1978.]

(5) in accordance with your written permission.

By order of the Board of Governors, December 22, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

The following are tentative outlines of the complete regulations:

OUTLINE A—REGULATION E

12 CFR PART 205— ELECTRONIC FUND TRANSFERS

Section 205.1—Scope and Purpose

(a) Electonic deposit of funds to an account.
(b) Transferring and withdrawing funds from an account.
(c) Protections under the regulation.

Section 205.2—Exempted Transfers

(a) Check guarantee or authorization services.
(b) Wire transfers.
(c) Certain securities or commodities transfers.
(d) Automatic transfers from savings to demand deposit accounts.
(e) Certain telephone-initiated transfers.

Section 205.3—Issuance of Access Devices

(a) General rule.
(b) Exception.
(c) Relation to Truth in Lending.
(d) Transition provision.

Section 205.4—Conditions of Liability of Consumer for Unauthorized Transfers

(a) General rule.
(b) Amount of consumer's liability.
(c) Notice to financial institution.
(d) Determination of liability in certain transfers.

Section 205.5—Initial Disclosures

(a) General rule (§ 905(a)).
(b) Specific disclosure requirements (§§ 905(a)(1)-(9), 906(b), 910).
(c) Preexisting accounts (§ 905(c)).

Section 205.6—Subsequent Disclosures

(a) Change in terms (§ 905(b)).
(b) Annual error resolution notice (§ 905(a)(7)).

Section 205.7—Documentation of Transfers

(a) Terminal transfers by consumers (§ 906(a)).
(b) Preauthorized transfers (§ 906(b)).
(c) Periodic statements (§ 906(c)).

Section 205.8—Preauthorized Transfers (§ 907)

(a) Specific requirements.

Section 205.9—Error Resolution (§ 908)

(a) Notification of errors.
(b) Correction of errors.
(c) Recrediting of accounts.

Section 205.10—Relation to State Law

(a) Inconsistent State laws (§ 919).
(b) Preempted State law provisions (§ 920).
(c) Exemption for State regulated transfers; procedures and criteria (§ 920).

Section 205.11—Administrative Enforcement

(a) Administrative enforcement (§ 917).
(b) Issuance of interpretations (§ 915(d)).
(c) Issuance of model clauses (§ 904(b)).
(d) Preservation and inspection of evidence of compliance.

Section 205.12—Definitions and Rules of Construction (§ 903) [15]

(a) Access device and accepted access device.
(b) Account.
(c) Act.
(d) Business day.
(e) Consumer.
(f) Credit card.
(g) Electronic fund transfer.
(h) Electronic terminal.
(i) Extension of credit.
(j) Financial institution.
(k) Issuer.
(l) Open end credit plan.
(m) Unauthorized electronic fund transfer.
(n) Captions and catchlines.
Appendix A—Model Disclosure Clauses.

OUTLINE B—REGULATION E

12 CFR PART 205— ELECTRONIC FUND TRANSFERS

GENERAL PROVISIONS

Section 205.1—Scope and Purpose

(a) Electronic deposit of funds to an account.
(b) Transferring and withdrawing funds from an account.
(c) Protections under the regulation.

OPENING AN ACCOUNT FOR EFT SERVICES

Section 205.2—Disclosure Requirements

(a) Initial disclosures.
(b) Preexisting accounts.
(c) Subsequent disclosures.

Section 205.3—Issuance of Access Devices

(a) General rule.
(b) Exception.
(c) Relation to Truth in Lending.
(d) Transition provision.

CONTINUING REQUIREMENTS

Section 205.4—Periodic Statements and Error Resolution

(a) Periodic statements.
(b) Identification of transfers.
(c) Error resolution.

Section 205.5—Conditions of Liability of Consumer for Unauthorized Transfers

(a) General rule.
(b) Amount of consumer's liability.
(c) Notice to financial institution.
(d) Determination of liability in certain transfers.

DEPOSITS TO AND PAYMENTS FROM ACCOUNTS

Section 205.6—Documentation of Deposits

(a) Preauthorized deposits (§ 906(b)).
(b) Other deposits (§ 906(a)).

Section 205.7—Documentation of Payments

(a) Preauthorized payments (§ 907).
(b) Electronic terminal payments (§ 906(a)).
(c) Other payments.

ADMINISTRATIVE PROVISIONS

Section 205.8—Administrative Enforcement

(a) Administrative enforcement (§ 917).
(b) Issuance of interpretations (§ 915(d)).
(c) Issuance of model clauses (§ 904(b)).
(d) Preservation and inspection of evidence of compliance.

Section 205.9—Relation to State Law

(a) Inconsistent State laws (§ 919).
(b) Preempted State law provisions (§ 920).
(c) Exemption for State regulated transfers; procedures and criteria (§ 920).

EXEMPTIONS AND DEFINITIONS

Section 205.10—Exempted Transfers

(a) Check guarantee or authorization services.
(b) Wire transfers.
(c) Certain securities or commodities transfers.
(d) Automatic transfers from savings to demand deposit accounts.
(e) Certain telephone-initiated transfers.

Section 205.11—Definitions and Rules of Construction (§ 903) [15]

(a) Access device and accepted access device.
(b) Account.
(c) Act.
(d) Business day.
(e) Consumer.
(f) Credit card.
(g) Electronic fund transfer.
(h) Electronic terminal.
(i) Extension of credit.
(j) Financial institution.
(k) Issuer.
(l) Open end credit plan.
(m) Unauthorized electronic fund transfer.
(n) Captions and catchlines.
Appendix A—Model Disclosure Clauses.

[FR Doc. 78-36197 Filed 12-28-78; 8:45 am]

[15] Other definitions to be added.

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Part 249]

[EDR-365A; Docket 33725;
Dated: December 22, 1978]

PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS AND MEMORANDA

Supplemental Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: This action extends to January 26, 1979 the filing date for comments in a rulemaking proceeding to revise the rules for the preservation of air carrier records. The extension was requested by Delta Airlines.

DATES: Comments by: January 26, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 33725, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. 202-673-5442.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-365 (43 FR 50150, October 26, 1978) the Board proposed to amend Part 249 of the Board's Economic Regulations pertaining to the preservation of records by air carriers. The proposed rule would allow records to be maintained in a form other than on the original paper as is presently required. There are also provisions in the proposed rule concerning such matters as the retention of records, designation of supervisory officials to be in charge of the records, and the requirement of the maintenance of a comprehensive index of the records being preserved.

The comment closing date is December 26, 1978.

Delta Airlines has requested an extension to January 26, 1979. Delta based its request on the need for more time to compile adequately the results of its review and analysis of the effect of the proposed rule.

Upon consideration of the above, the undersigned finds good cause to grant the request for an extension of time for the preparation of comments on the proposed rule.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)), the time for filing comments is extended to January 26, 1979.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

RICHARD B. DYSON,
Associate General Counsel.

[FR Doc. 78-36355 Filed 12-28-78; 8:45 am]

[3510-08-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 923]

COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

Proposed Rule

AGENCY: National Oceanic and Atmospheric Administration, NOAA, Department of Commerce.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations established revised procedures the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA) proposes to adopt concerning amendments to approved State coastal management programs. These procedures would replace those presently contained in Subpart I, 15 CFR Part 923, Interim-Final Regulations published in the FEDERAL REGISTER on March 1, 1978 (Vol. 43, No. 41, pages 8425-8429).

DATE COMMENTS DUE: January 29, 1979.

FOR FURTHER INFORMATION, CONTACT:

Carol Sondheimer; Acting Chief, Policy and Program Evaluation, Office of Coastal Zone Management; Page Building 1; 3300 Whitehaven Street, N.W.; Washington, D.C. 20235; 202-634-4245.

SUPPLEMENTARY INFORMATION: On March 1, 1978, the National Oceanic and Atmospheric Administration published interim-final regulations dealing with requirements for the development and approval of state coastal management programs pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter referred to as the "Act.") Contained in those regulations is Subpart I which defines changes to approved state programs and contains procedures for incorporating these changes into a state's program.

On July 6, 1978, the National Oceanic and Atmospheric Administration issued a notice in the FEDERAL REGISTER (Vol. 43, No. 130, pages 29106-29109) extending the comment period on the interim-final regulations to August 31, 1978. This extension notice specifically noted the manner in which Office of Coastal Zone Management intended to revise substantially Subpart I dealing with changes to approved state programs.

Based on comments received during the extended comment period, Office of Coastal Zone Management since has revised Subpart I. Because these revisions are substantially different from those described in the July 6, 1978, extension notice, the Office of Coastal Zone Management now is providing all interested and affected parties a further opportunity to review and comment on this subpart prior to its incorporation into the Coastal Zone Management Program Development and Approval Regulations and their publication in final form.

Until final regulations are published, the interim-final regulations published March 1, 1978, are in effect.

SUMMARY OF SUBPART I PROVISIONS

These proposed regulations would eliminate the distinction in the Interim-Final Regulations between amendments and refinements. Instead two classes of actions would be treated as amendments. One class would deal with substantive changes in enforceable policies or authorities related to: (1) boundaries, (2) uses subject to a State's management program, (3) criteria or procedures for designating areas of particular concern or areas for preservation or restoration, and (4) policies or procedures for consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature (See § 923.80(c)). The second class of actions which would be treated as amendments would involve local coastal programs, for States employing the control technique of local implementation authorized by section 306 (e)(1)(A) of the Act. These are local programs which will be approved by a State subsequent to that State's management program receiving full approval by the Assistant Administrator for Coastal Zone Management (hereafter referred to as the Assistant Administrator) (See § 923.80(d)). Other changes to a State's program which are in accordance with procedures contained in a State's approved program will be considered routine program implementation which are not subject to the amendment procedures contained in § 923.82. For routine program implementation, States must notify the Office of Coastal Zone Management and affected parties (including relevant Federal agencies) of such changes so that the consistency provisions of section 307 of the Act can apply (See § 923.84).

Section 923.81 describes the content of amendment requests, the timing of submission and who may request an amendment. Because the Office of Coastal Zone Management wants to coordinate its own review procedures with those occurring at the State level in order to minimize delays and duplication, States are encouraged to submit amendment requests prior to final State action. (See § 923.81(c).)

Upon receipt of an amendment request, the Office of Coastal Zone Management will review it in order to make two determinations: (1) that the program, if changed according to the amendment request, would still constitute an approvable program and (2) that certain procedural requirements of section 306(c) of the Act have been met. (See § 923.82(a) for detailed criteria by which these determinations will be made.)

If a determination is made by the Assistant Administrator as a preliminary matter that the amendment request is approvable, then a determination will be made whether an environmental impact statement (EIS) is required, pursuant to the National Environmental Policy Act of 1969, as amended. (See § 923.82(c).)

Where an EIS is required the Office of Coastal Zone Management will follow the standard procedures provided by the Council on Environmental Quality (CEQ). (See § 923.82(c)(1).)

Where an EIS is not required, the Office of Coastal Zone Management will publish notice in the FEDERAL REGISTER of the content of the proposed amendment and the Assistant Administrator's intent to approve. Where a state has provided opportunity for timely review and comment on its proposed amendment at the State or local level, the Assistant Administrator will normally approve the proposed amendment after the close of the comment period unless the head of a Federal agency raises a serious disagreement with the State about its proposed amendment pursuant to section 307(h) of the Act. (See § 923.82(c)(2).)

Section 923.83 describes mediation procedures available to attempt to resolve serious disagreements between a Federal Agency and a coastal State with respect to proposed amendments.

Section 923.85 contains conditions and procedures by which funding for approved programs may be terminated for programmatic reason. This section is essentially unchanged, except for minor editorial changes, from § 923.83 of the Interim-Final regulations.

PUBLIC REVIEW AND COMMENT

NOAA invites public review and comment on this proposed rule so it again may be modified, if necessary and where legally permissible, to fully satisfy the requirements of the Act in a manner which addresses the concerns of all parties affected by the regulations. Written comments should be submitted to: Carol Sondheimer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington D.C. 20235, on or before January 29, 1979. Following the close of the comment period, and after review of comments, this proposed rule may be amended and will be published along with the rest of the Program Development and Approval Regulation as final regulations in the FEDERAL REGISTER.

M. P. SNIDERO,
Acting Deputy Assistant Administrator for Administration.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

Subpart I—Amendments to Approved Management Programs

923.80 General.
923.81 Request for amendments.
923.82 Amendment review approval procedures.
923.83 Mediation of amendments.
923.84 Routine program implementation.
923.85 Termination and withdrawal of administrative funding.

Subpart I—Amendments to Approved Management Programs.

§ 923.80 General

(a) This subpart establishes the criteria and procedures by which amendments to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Statutory Citations. Subsection 306(g):

> Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c). . . . [N]o grant shall be made under this section to any coastal state after the date of such amendment of modification, until the Secretary approves such amendment or modification.

Subsection 312(b):

> The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantive changes in enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating areas or particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

(d) For States employing the control technique authorized by section 306(e)(1)(A) of the Act (local implementation pursuant to State criteria and standards), local coastal programs, which will be approved by the State subsequent to the State's management program receiving full approval by the Assistant Administrator, shall be treated as amendments to the State's approved management program. Subsequent changes to local coastal programs will not be treated as amendments to the State's management program if they were adopted in accordance with the following procedures:

(1) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of changes to local programs;

(2) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to its approval of local programs changes; and

(3) Review by the State of the adequacy of local government consideration of facilities identified in a State's management program in which there is a national interest where a local program change may affect such facilities.

§ 923.81 Request for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) *Requirements.* Amendment requests shall contain the following:

(1) Description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator;

(2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendment:

(i) At least one public hearing must be held on the proposed amendment, pursuant to sections 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

(*Comment.* Where administratively possible, States should endeavor to tie the public hearing(s) on the proposed amendment to existing State hearing procedures, for example, State agency hearings required under State law prior to approval of local coastal programs. Since hearings on amendments to approved management programs are subject to a minimum 30 day notice, States may want to alter or supplement their notice procedures where these presently provide less than 30 days notice.)

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments:

(i) Where OCZM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(*Comment.* See related discussion in paragraph (c).)

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in (1) above), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed;

(5) Environmental Impact Assessment;

(6) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

(c) Requests for amendments should be submitted to the Assistant Administrator whenever possible prior to final

State action to implement a major program.

(*Comment.* Where a program change will be effectuated by State administrative action, such as adoption of State agency rules and regulations or State commission approval of mandated local programs, the request for an amendment of the State's approved management program should occur before final State agency action in order that OCZM may coordinate its review period with that occuring at the State level.

Where a program amendment is the result of legislative action, OCZM recognizes it will be more difficult to submit amendment requests as a matter of course prior to final State action. Even in these cases, nonetheless, OCZM encourages States to submit amendment requests prior to final legislative action.)

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment request, still would constitute an approvable program. For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(i) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(ii) Transitional and intertidal areas;

(iii) Salt marshes and wetlands;

(iv) Islands;

(v) Beaches; and

(vi) Waters under tidal influence.

For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(i) Identify which uses are subject to the management program;

(ii) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of sections 302 and 303 of the Act; and

(iii) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval.

For amendments affecting criteria for designating areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(i) Criteria for marine designations;

(ii) Designation of areas on a generic or site-specific basis;

(iii) Description of how the management program addresses and resolves the management concerns for which areas are designated; and

(iv) Guidelines regarding priority of uses, including uses of lowest priority.

For amendments affecting criteria for designating areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to:

(i) Provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values;

For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(i) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedure;

(ii) The sources relied upon for such consideration;

(iii) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered; and

(iv) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act.

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (sections 306(c)(1) and (c)(3)); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(c) of the Act have not been met, the Assistant Administrator shall advise the State in writing of the reasons why the amendment request cannot be considered.

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with respect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the management program unapprovable, that State may be subject to termination of program approval and withdrawal of administrative funding. (See § 923.85.)

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(c) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(*Comment.* Where State management programs contain adequate opportunities for governmental and public review and comment on their proposed amendment request (as discussed in § 923.82(a)(2)(i)), OCZM anticipates that the 45 day review period for its DEIS and the 30 day review period for the FEIS will be strictly adhered to.)

(i) Following review of comments on the FEIS, the Assistant Administrator will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the FEDERAL REGISTER. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the FEDERAL REGISTER of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period, the Assistant Administrator

may approve the proposed amendment and issue notice thereof in the FEDERAL REGISTER.

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious disagreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized for serious disagreements during program implementation. (See § 923.54).

§ 923.84 Routine program implementation.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in §§ 923.80(c) and (d), will be considered routine program implementation. Such routine implementation is not subject to the amendment procedures contained in §§ 923.81-923.82.

(b) Prior to issuing notice to the general public of new, relevant information about, or requirements of, the program that result from routine program implementation, a State shall advise the Office of Coastal Zone Management of this action in order that OCZM may review the action to insure it does not constitute an amendment.

(1) States have the option of notifying the Office of Coastal Zone Management of routine program implementation on a case-by-case basis, periodically throughout the year, or annually.

(2) In determining when and how often to notify the Office of Coastal Zone Management of such actions, States should be aware that Federal consistency will apply only after general public notice has been provided. (See paragraph (d)(1) of this section.)

(c) Within 3 weeks of receipt of notice from a State, the Office of Coastal Zone Management shall inform the State whether it concurs that the action constitutes routine program implementation.

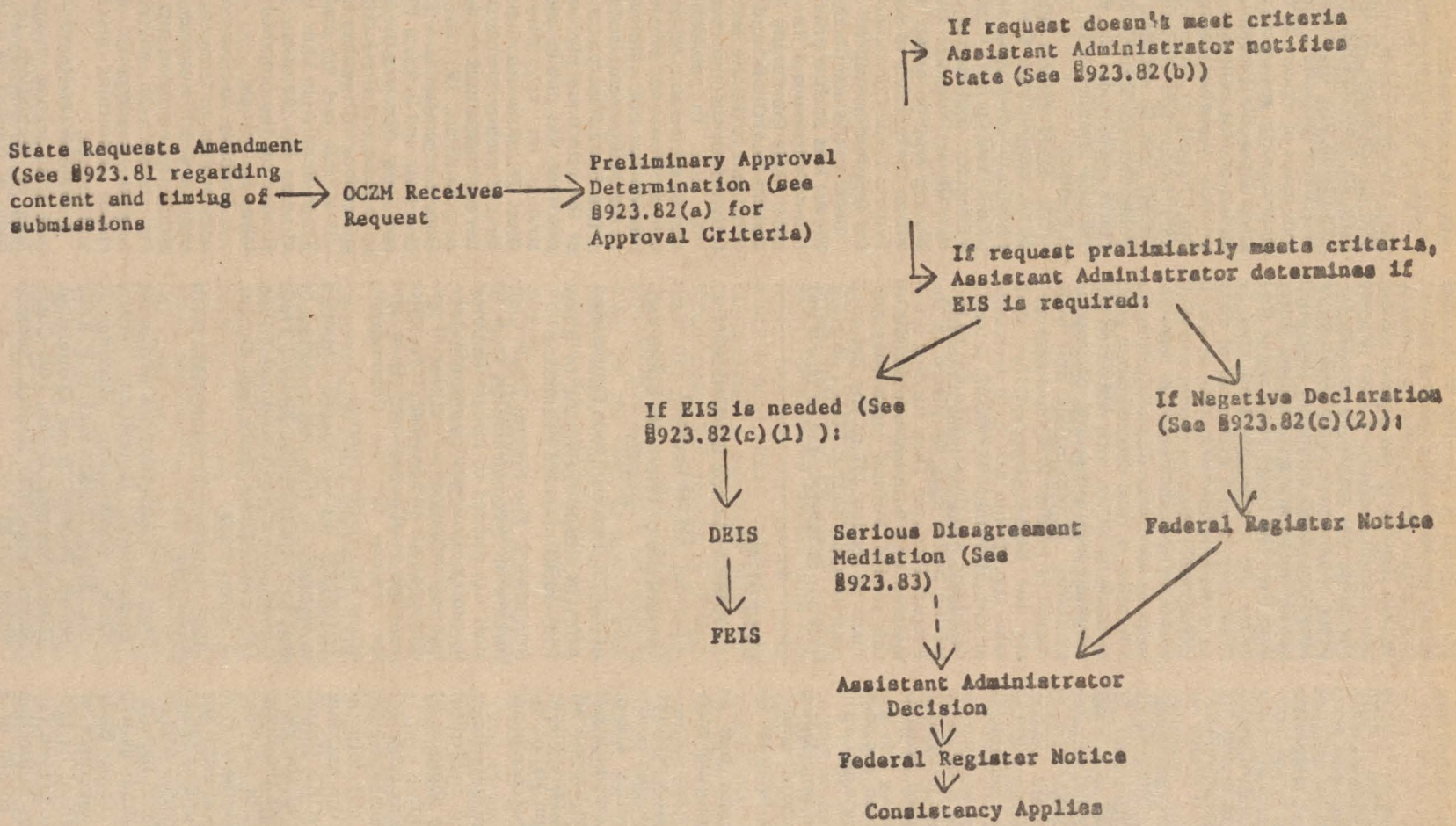
(d) Where the Office of Coastal Zone Management concurs, a State then should provide general public notice of the action to affected parties (including relevant Federal agencies).

(1) Federal consistency with the action shall not be required until this notice has been provided.

(e) Where the Office of Coastal Zone Management does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81—923.82.

CHART

AMENDMENT PROCESS



§ 923.5 Termination and withdrawal of administrative funding.

(a) Statutory Citation, Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(b) In addition to the provisions contained in OMB Circular A-102 relating to termination and withdrawal of funding awarded pursuant to a grant award, the Assistant Administrator may recommend to the NOAA Grants Office that section 306 grant funding be terminated and withdrawn if the Assistant Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) That State has been provided notice of intent to terminate and withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence, or justification for program alteration.

(c) Situations which may lead to notice of intent to terminate and withdraw funding include:

(1) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the Assistant Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified; or

(2) In going through the amendment process, a State acts to implement that amendment prior to approval by the Assistant Administrator.

(d) In the event there is cause for terminating and withdrawing section 306 funding, notice in the form of written documents from the Assistant Administrator and the NOAA Grants Officer to the Governor of the State in question or the head of the designated State agency shall be provided advising of the intent to terminate an approved grant and to withdraw any unexpended portions of funding assistance. Included in this notice will be the reasons for the proposed termination and withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence or justification for alteration of its program. Such opportunity to present evidence is referred to in subsection 312(b) of the Act shall consist of a thirty day period, commencing on receipt of notice, within which the State may respond by providing written materials demonstrating adherence to or justification for altering its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration. Such additional time shall not extend beyond a subsequent thirty days from the termination of the first thirty day period. In total then, a State may have a maximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of a State's evidence with respect to adherence or justification for alteration, a final determination shall be made by NOAA with respect to termination and withdrawal of funding assistance. If termination and withdrawal of funding is deemed appropriate, the NOAA Grants Office shall take appropriate action to terminate or withdraw funds. If funding is terminated and withdrawn pursuant to this section notice shall be placed in the FEDERAL REGISTER. Once funding is terminated and withdrawn pursuant to this section. Federal consistency pursuant to section 307 of the Act shall cease to apply to that State's program.

[FR Doc. 78-36270 Filed 12-28-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Chapter I]

ADVERTISING OF VETERINARY GOODS AND SERVICES

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to forego temporarily proposed rulemaking.

SUMMARY: The Federal Trade Commission on recommendation from its staff has decided to forego temporarily proposed rulemaking regarding certain restrictions on advertising of veterinary goods and services. This notice describes staff's proposed Rule and the reasons for the Commission's action with respect thereto.

ADDRESS: All documents submitted in response to this notice should be sent to F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

Paul K. Trause, Program Advisor for Occupational Regulation, Federal Trade Commission, Washington, D.C. 20580, 202-523-5344; or F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202, 303-837-2271.

SECTION A. THE PROPOSED RULE CONCERNING ADVERTISING OF VETERINARY GOODS AND SERVICES

Staff of the Federal Trade Commission was authorized by the Commission on December 19, 1975, to undertake an industrywide, non-public investigation into the regulation of the veterinary profession. Among the various issues of concern in this investigation were the restraints on veterinary advertising. Staff's completed investigation of this issue has resulted in a publicly available document entitled Staff Report on Advertising of Veterinary Goods and Services. The Staff Report may be obtained through the Public Records Branch, Federal Trade Commission, Room 130, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The Staff Report discusses facts which suggest that the restraints on veterinary advertising resulting from public and private enactments are widespread and pervasive. Moreover, the Report suggests that these restraints may be unfair and deceptive within the meaning of Section 5 of the Federal Trade Commission Act, requiring apppropriate relief.

Because the main body of the Staff Report was drafted prior to the Commission's issuance of the Trade Regulation Rule Concerning Advertising of Ophthalmic Goods and Services (16 CFR Part 456), the Report does not fully reflect the approach set forth in that Rule. In publishing the Staff Report Concerning Advertising of Veterinary Goods and Services, the Commission has not adopted the analysis or conclusions contained therein.

The Staff Report sets out a profile of the veterinary profession (Part I), describes the public and private restraints on veterinary advertising (Part II), discusses the economic effects of such restraints (Part III), and the arguments used to justify these restraints (Part IV). In Part V, the Report recommends a Trade Regulation Rule and in Parts VI and VII, respectively, discusses the legal basis for such Rule and the jurisdictional considerations with respect thereto.

The full text of staff's proposed Trade Regulation Rule may be found at pages 100-102 of the Staff Report. If enacted, the proposed Trade Regulation Rule would:

1. Prohibit members of the veterinary profession from engaging in any activity which burdens, limits or restricts the ability of any other industry member to advertise, in any medium, nondeceptive statements or claims concerning veterinary goods and services;

2. Prohibit veterinary industry members from relying on any non-federal laws or regulations or any private codes of conduct as a reason for not

advertising in any medium, nondeceptive statements or claims concerning veterinary services;

3. Limit the disciplining of veterinary association members who engage in advertising;

4. Prohibit veterinary industry members from complying with any non-federal law or regulation or any private rule which requires unduly burdensome disclosures.

SECTION B. COMMISSION ACTION WITH RESPECT TO STAFF'S PROPOSED RULE CONCERNING ADVERTISING OF VETERINARY GOODS AND SERVICES

After Staff completed its initial draft of the Report, it was learned that the major national association of veterinarians, the American Veterinary Medical Association (AVMA), was recommending that state veterinary licensing boards substantially relax their restraints on veterinary advertising. In conjunction with this recommendation, the AVMA published a set of proposed Regulations concerning veterinary advertising. These Regulations are analyzed in relation to the proposed Rule in the Preface to the Staff Report.

The AVMA has also revised that section of its Code of Veterinary Medical Ethics which, theretofore, had prohibited virtually all forms of veterinary advertising. Simultaneously, the AVMA announced a study of the annotations to this section of its ethical code which may culminate in revisions of these annotations.

Because the AVMA has taken creditable actions which may result in the voluntary relaxation of the public and private restraints on veterinary advertising, the Commission has decided, in the excercise of its discretion, to forego temporarily rulemaking in this area.

Through the end of June, 1979, Commission staff will monitor the revisions, if any, to the public and private enactments that prohibit or restrict veterinary advertising. Additionally, staff will monitor the effects of such revisions, if any, with particular concern to the actual occurrence of veterinary advertising. If, at the end of this period, staff reports that the restraints on veterinary advertising are no longer prevalent, the Commission may decide to forego permanently rulemaking in this area. On the other hand, if the restraints remain prevalent or the revisions of such restrictions have not been effectively implemented, the Commission may publish a proposed rule or take such other action as may be appropriate under the circumstances.

SECTION C. INVITATION TO COMMENT

Any interested person may submit data, views, or arguments on any issue of fact, law or policy which may pertain to the staff's proposed Rule or the Commission's action with respect thereto.

Such written comments will be accepted until March 31, 1979, and should be directed to F. Kelly Smith, Federal Trade Commission, Denver Regional Office, 1405 Curtis Street, Suite 2900, Denver, Colorado 80202. To assure prompt consideration, comments should be identified as "Veterinary Advertising Comment." By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-33991 Filed 12-28-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1205]

POWER LAWN MOWERS

Extension of Safety Standard Development Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time.

SUMMARY: The Consumer Product Safety Commission extends until February 15, 1979, the period during which it must either (1) issue a final safety standard addressing blade contact injuries associated with walk-behind power lawn mowers or (2) withdraw the portions of the previously proposed standard that address such injuries. This extension is necessary in order for the staff to analyze comments it has recently received concerning the safety and reliability of brake-clutch mechanisms for power lawn mowers.

FOR FURTHER INFORMATION CONTACT:

Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (202) 634-7770.

SUPPLEMENTARY INFORMATION: On May 5, 1977 (42 FR 23052), the Commission proposed a safety standard for power lawn mowers (16 CFR Part 1205). Section 9(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2058(a)(1)) requires that within 60 days after the publication of a proposed consumer product safety rule, the Commission shall either (1) promulgate a rule respecting the risk of injury associated with such product or (2) withdraw the applicable notice of proceeding, unless the Commission extends the 60-day period for good cause and publishes its reasons in the FEDERAL REGISTER. The Commission has previously extended the time for either issuing a final standard or withdrawing the proposal to December 29, 1978, for requirements addressing blade contact with walk-behind mowers and to December 31, 1979, for other risks of injury addressed by the proposed standard, such as those for thrown objects and for riding mowers (May 5, 1977, 42 FR 23052; October 7, 1977, 42 FR 54573; June 7, 1978, 43 FR 24697).

As part of its consideration of potential requirements addressing blade contact injuries, the Commission on November 2, 1978, requested comment on data it had received concerning the reliability and safety of brake-clutch mechanisms for power lawn mowers and also sought comment on several questions concerning this subject (43 FR 51038). The period for response to these requests was set to expire November 22, 1978. However, the Commission received several requests for an extension of this period and for the Commission to allow the presentation of oral comments on this subject. In response to these requests, the Commission extended the comment period until December 15, 1978, and allowed the oral presentation of comments on December 11, 1978 (43 FR 55771).

A public meeting at which the Commission would consider the issuance of a final safety standard addressing the risk of injury from contact with blades of walk-behind power lawn mowers was originally scheduled for December 15, 1978. However, because of the extension of the comment period concerning brake-clutch safety and reliability, discussed above, and because of the additional time that will be required for the staff to analyze the comments that have been received and the transcript of the oral presentation, it is not possible for the Commission to consider and issue a standard by December 29, 1978.

The Commission presently plans to consider the issuance of a standard at its meeting on January 25, 1979. If the Commission votes at that time to issue a final standard, an additional period will be required to make any necessary changes in the FEDERAL REGISTER notice that will issue the standard and to arrange for publication of the standard in the FEDERAL REGISTER.

Accordingly, the Commission hereby extends until February 15, 1979, the period during which it must either issue a final standard addressing blade contact injuries associated with walk-behind power lawn mowers or withdraw the proposal of the requirements addressing such injuries. The period ending December 31, 1979, for other requirements of the proposal is not affected by this extension. However, the Commission may in the future, for good cause shown, extend either of these periods as appropriate.

Dated: December 22, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-36367 Filed 12-28-78; 8:45 am]

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Regulations No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Reduction of Benefits to Maximum

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The amendment to the regulations reflects the provision of Section 202 of Pub. L. 95-216 (Social Security Amendments of 1977) which provides a new formula for determining the family maximum for years after 1978.

DATES: Your comments will be considered if we receive them no later than February 27, 1979.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

David B. Smith, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7951.

SUPPLEMENTARY INFORMATION: The amendment to the regulations implements that portion of Section 202 of Pub. L. 95-216 which provides for a maximum amount that may be paid on the earnings record of an insured individual for any one month. Prior to the amendment the maximum amounts were specific dollar amounts shown in a table in the law. The amendment substitutes a formula for fixing the maximum. The formula maintains the same approximate relationship between the maximum payable on the worker's account and the worker's primary insurance amount (PIA) as under present law. Where the maximum applies, individual benefits are adjusted so that the total is, in general, not exceeded. For years after 1978, the maximum is computed by applying set percentages to dollar portions of the PIA. The dollar portions will be updated each year as average earnings rise and will be applied to persons becoming eligible within the year for which the dollar portions are effective. The new dollar portions shall be published in the Federal Register on or before November 1 of each year after 1978 and shall be effective with the following year.

The amendment is to be issued under the authority of Sections 203, 205, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; 42 U.S.C. 403, 405, and 1302.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance, and 13.803 Social Security—Retirement Insurance.)

Dated: August 15, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: September 1, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising paragraph (a) of § 404.403 to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

* * * * *

(a) *Determining maximum amounts for months after 1964.* (1) *Eligibility or death after 1978.*

If more than one person is entitled to monthly benefits for the same month on the same earnings record, the amount of the monthly maximum depends on the year the insured individual attained age 62, became eligible for disability benefits or died before reaching age 62 or becoming disabled.

(i) If an insured individual attains age 62 or dies in 1979, the monthly maximum is as follows:

(*a*) 150 percent of the first $230 of the individual's primary insurance amount, plus

(*b*) 272 percent of the primary insurance amount over $230 but under $333, plus

(*c*) 134 percent of the primary insurance amount over $332 but under $434, plus

(*d*) 175 percent of the primary insurance amount over $433.

(ii) For purposes of determining the monthly maximum, the year of death or attainment of age 62 does not control if the insured individual became entitled to a disability benefit within the preceding 12-month period. Instead the year of eligibility for the disability insurance benefit controls.

(iii) If an insured individual becomes eligible or dies after 1979, the monthly maximum is computed as in paragraph (a)(1)(i) of this section. However, the dollar amounts shown there will be updated by multiplying them by the quotient obtained from applying the formula in § 215(a) of the Social Security Act, as amended (42 U.S.C. 415(a)).

(iv) An amount computed under paragraph (a)(1)(i) of this section that is not a multiple of $0.10 is rounded to the next higher multiple of $0.10. An amount computed under paragraph (a)(1)(iii) of this section is rounded to the next higher dollar if the amount is an exact multiple of $0.50. Otherwise, it is rounded to the nearest $1.

(v) On or before November 1 of each calendar year after 1978, the Secretary shall publish in the FEDERAL REGISTER the formula to be used for determining the monthly maximum for the following year.

(vi) If any of the persons entitled to benefits on the earnings record of an insured individual would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits of all such persons may not be reduced to less than the smaller of: (*a*) the sum of the maximum amounts of benefits payable on the earnings records of all the insured individuals, or (*b*) 1.75 times the highest primary insurance amount possible for that month based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year.

(vii) If benefits are payable on the earnings of more than one individual and the primary insurance amount of one of the insured individuals was computed under the provisions in effect before 1979 and the primary insurance amount of the others was computed under the provisions in effect after 1978, the maximum monthly benefits are computed under paragraph (a)(1)(vi)(*b*) of this section. The family maximum provisions applicable before 1979 remain in effect for individuals who before 1979 became eligible for old-age benefits or disability benefits or died before becoming eligible.

(2) *Eligibility or death before 1979.* Where more than one person is enti-

tled to monthly benefits for the same month on the same earnings record and the total of the monthly benefits exceeds the amount appearing in column V of the applicable table in section 215(a) of the Act on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable, the total benefits for each month after 1964 are reduced to the amount appearing on the appropriate line in column V; provided that when any of the persons entitled to benefits on the insured individual's earnings would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the basis of the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of: (i) the sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals, or (ii) the last figure in column V of the applicable table or deemed to be in section 215(a) of the Act. The "applicable" table or deemed to be in section 215(a) of the Act means that table which is effective for the month the benefit is payable.

* * * * *

[FR Doc. 78-36343 Filed 12-28-78; 8:45 am]

[1505-01-M]

Food and Drug Administration

[21 CFR Part 350]

[Docket No. 78N-0064]

ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER USE

Establishment of a Monograph; Notice of Proposed Rulemaking

Correction

In FR Doc. 78-28083 appearing at page 46694 in the issue for Tuesday, October 10, 1978, make the following corrections:

(1) On page 46694 change the following: In the middle column, in the third complete paragraph, change the date in the eleventh line from "November 6, 1978" to "November 9, 1978", and change the reference to "(21 U.S.C. 33(j))" in the 17th line to read "(21 U.S.C. 331(j))". Also, in the second line from the bottom of the column, change "effective and misbranded" to read "effective and not misbranded". In the third column, in the last line of the first complete paragraph, change "their further use" to read "their future use".

(2) On page 46698, at the bottom of the center column, the last paragraph (designated footnote 1) should be deleted because it is a duplication of a footnote appearing earlier in the document.

(3) On page 46700, first column, in the second line of the second complete paragraph, the word "accrine" should have read "eccrine".

(4) On page 46704, first column, in the 13th line of the third complete paragraph, "containing research" should have read "continuing research".

(5) On page 46705, center column, in the seventh line of the second complete paragraph, "*S. edidermidis*" should have read "*S. epidermidis*".

(6) On page 46706, first column, in the third complete paragraph, beginning in line 15 and ending in line 17, delete the following sentence: "In each case, the lowest concentration was reduced to zero."

(7) On page 46708, third column, in the third complete paragraph (designated "a."), in the first line, "*long-term*" should have read "*long-time*".

(8) On page 46709, in the first column, in the first line of the second complete paragraph, "The public is not able to purchase" should have read "The public is now able to purchase".

(9) On page 46712, middle column, in the first line of the second complete paragraph, "These findings several obvious ways" should have read, "These findings suggest several obvious ways".

(10) On page 46717, first column, in the fifth complete paragraph, the formula should have read as set forth below:

$$H_0 = P < 0.5$$

$$H_A = P \geq 0.5 \quad (\alpha = 0.05, \text{ one sided}),$$

where H_0 is the null hypothesis, P is the probability, H_A is the alternative hypothesis, and α is the predetermined arbitrary level of significance.

(11) On page 46720, center column, under "References", in item number six, "14001" should have read "140001".

(12) In page 46726, first column, after the fifth paragraph the heading "References" should be inserted.

(13) On page 46732, center column, the formula in paragraph (b) of § 350.44 should have appeared as follows:
Also, in paragraph (c) of § 350.44, under "Total number of test subjects", the entry now reading "35" should have read "25".

$$H_0 = P < 0.5$$
$$H_A = P \geq 0.5 \quad (\alpha = 0.05, \text{ one sided})$$

where H_0 is the null hypothesis, P is the probability, H_A is the alternative hypothesis, and α is the predetermined arbitrary level of significance.

[1505-01-M]

[21 CFR Part 352]

[Docket No. 78N-00338]

SUNSCREEN DRUG PRODUCTS FOR OVER-THE COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

Correction

In FR Doc. 78-22963 appearing at page 38206 in the issue for Friday, August 25, 1978 and corrected on page 58097 in the issue for Tuesday, December 12, 1978, in the third column, the correction numbered 13, third line, insert "a" directly after the quotation mark.

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

[24 CFR Part 390]

[Docket No. R-78-604]

GRADUATED PAYMENT MORTGAGES

Proposed Amendments To Establish a New Modified Pass-Through Securities Program

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: This proposal establishes a new mortgage-backed securities program that provides for the guaranty by GNMA of securities based on and backed by pools of Graduated Payment Mortgages (GPM's). GPM loans are single family mortgages whose

monthly payments increase annually for a fixed number of years. Only GPM's that are insured by the Federal Housing Administration under section 245 of the National Housing Act and that are scheduled to have increased payments for a maximum of five years are eligible for inclusion in GNMA pools. The program is intended to expand the secondary market in GPM's and thereby make available additional mortgage money at reasonable interest rates.

DATE: Comments due: January 29, 1979.

ADDRESS: Comments should be mailed or delivered to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Warren Lasko, Vice President for Mortgage-Backed Securities, Government National Mortgage Association, 451 Seventh Street, SW., Room 6224, Washington, D.C. 20410, (202) 755-8772.

SUPPLEMENTARY INFORMATION: The purpose of the proposed amendments is to establish a new program of federally guaranteed mortgage-backed securities which will allow for the inclusion of so-called Graduated Payment Mortgages in the pools which back the securities.

Under section 306(g) of the National Housing Act, as amended, the Government National Mortgage Association (GNMA) guarantees the timely payment of principal and interest on securities issued by approved private lenders, which securities are backed by federally insured or guaranteed mortgage loans. At present, such guaranteed securities programs exist for level payment single family loans, mobile home loans, residential project loans, and project construction loans. The new program will provide for the inclusion of single family mortgages insured under section 245 of the National Housing Act, and known as Graduated Payment Mortgages, in mortgage loan pools backing securities issuances. Graduated Payment Mortgages have amortization schedules that provide for annual increases in the monthly installments in the early years of the mortgage. The eligibility of such loans for the securities issuances will substantially enhance the marketability of such loans. This in turn will increase the availability of loan funds for these innovative mortgages and should help maintain interest rates on such loans at reasonable rates.

It is proposed that Part 390 be amended to redesignate existing Subpart C as Subpart D and to add a new Subpart C, which will provide the regulatory authority for the new program. The new program is essentially identical to the existing single family mortgage-backed securities program, except as modifications are required to accommodate the unique provisions of graduated payment loans. The specific provisions of the proposed amendments are as follows:

Section 390.40 provides that GNMA is authorized by section 306(g) of the National Housing Act to establish federally guaranteed mortgage-backed securities programs. It further provides that participants in the programs are subject to the provisions contained in the Mortgage-Backed Securities Guide (GNMA 5500.1), and to any contracts entered into by parties participating in the programs.

Section 390.41 provides that to be an eligible issuer of the new securities, an applicant must satisfy those same requirements which are presently applicable with respect to issuers of level payment single family type securities.

Section 390.42 provides that for a Graduated Payment Mortgage to be eligible for inclusion in a pool as backing for the new security, it must be insured by the Federal Housing Administration pursuant to section 245 of the National Housing Act. The proposed rule limits the eligibility of such loans to those mortgages that have amortization schedules that provide for equal, or level, monthly installments beginning no later than the 61st scheduled monthly installment.

Section 390.43(a) provides that the securities to be issued are to be modified pass-through type securities. Such securities require the pass-through to security holders, whether or not collected by the issuer from the mortgagors, of interest scheduled to be collected on the pooled mortgages, less appropriate amounts for guaranty fees and mortgage servicing, together with scheduled principal installments and any prepayments or other early recoveries of principal on the mortgages. For Graduated Payment Mortgages, the scheduled principal payments may be "negative," in which case the outstanding securities balance will increase.

Section 390.43(b) provides that the minimum amount of each issue of securities may be no less than $1 million, which amount is the same as in the present single family mortgage-backed securities program. This section also provides that, upon the mutual agreement of GNMA and issuers, arrangements may be made for the consolidation of securities issued under this program. This provision is intended to permit, upon the development of appropriate procedures, the consolidation of paid down pools. Such consolidation has the potential for increasing the efficiency of mortgage pool administration.

Section 390.43(c) provides that the original amount of any individual security may not be less than $25,000, as is the case under each of the other existing mortgage-backed securities programs.

Section 390.43(d) provides that the securities are freely transferable and assignable in registered form on the books of GNMA and the issuer, as is the case under each of the existing mortgage-backed securities programs.

Section 390.44 provides that the administration of the securities and the pooled mortgages shall be in accordance with the provisions applicable to existing mortgage-backed securities programs.

Section 390.45 provides that the administrator of the securities and the pooled mortgages shall be in accordance with the provisions applicable to existing mortgage-backed securities programs.

Section 390.46 provides that any failure of an issuer of securities to make required payments to securities holders in a timely manner may be deemed by GNMA to be an event of default under the guaranty agreements entered into between GNMA and the issuer. Such other failures or inabilities as GNMA may determine and may include in the guaranty agreements entered into with the issuer similarly may be deemed events of default. This section also provides that upon any declaration of default, GNMA may extinguish any right, title, or other interest of the issuer in the pooled mortgages.

Section 390.47 authorizes GNMA to impose application fees, guaranty fees, transfer fees, and such other fees as may be deemed appropriate. It is GNMA's intention to utilize the same fee structure for the new program that is applicable to the existing single family mortgage-backed securities program.

A finding of inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures.

1. It is proposed to amend 24 CFR Part 390 as follows:

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Sec.

* * * * *

Subpart C—Modified Pass-Through Type Securities—Graduated Payment Mortgage

390.40 General.
390.41 Eligible issuers of securities.
390.42 Eligible mortgages.
390.43 Securities.

Sec.
390.44 Pool Administration.
390.45 Guaranty.
390.46 Default.
390.47 Fees.

Subpart D—Miscellaneous Provisions

390.50 Audits and reports.
390.51 Applications.

2. It is proposed that Part 390 be amended to add a new Subpart C, Modified Pass-Through Type Securities—Graduated Payment Mortgages, as follows:

Subpart C—Modified Pass-Through Type Securities—Graduated Payment Mortgages

§ 390.40 General.

This subpart provides for the guaranty by the Association of timely payment of principal and interest on modified pass-through securities based on and backed by eligible mortgages, which mortgages provide for non-level monthly installments. the Association is authorized by section 306(g) of the National Housing Act to make such guarantees. Issuance of securities under this Subpart is subject to the provisions that follow, to the further provisions contained in the Mortgage-Backed Securities Guide (GNMA 5500.1), as it shall exist and be amended or supplemented from time to time, and to the contracts entered into by the participating parties.

§ 390.41 Eligible issuers of securities.

To be eligible to issue Modified Pass-Through Securities—Graduated Payment Mortgages, an applicant shall satisfy those requirements applicable to the issuance of modified pass-through securities based on and backed by mortgages on one- to four-family residences as provided in § 390.3 (Eligible Issuers of Securities).

§ 390.42 Eligible mortgages.

Each issue of guaranteed securities shall be based on and backed by a pool of Graduated Payment Mortgages which are insured by the Federal Housing Administration pursuant to section 245 of the National Housing Act: *Provided*, That all such pooled mortgages shall provide for equal (level) monthly installments beginning no later than the 61st scheduled monthly installment.

§ 390.43 Securities.

(a) *Instruments.* Securities to be issued under this Subpart shall be modified pass-through type securities, which shall provide for the payment, whether or not collected by the issuer from the mortgagors, of interest scheduled to be collected on the pooled mortgages, less appropriate amounts for guaranty fees and mortgage servicing, together with scheduled principal installments and any prepayments or other early recoveries of principal on the mortgages. The issuer is required to make advances as necessary in connection with delinquent mortgages and mortgages for which foreclosure action has been initiated in order to maintain the required payments of interest and principal to security holders. In addition, the issuer is required to make advances from its own resources to make up in a timely manner any loss arising from the assignment or foreclosure of a mortgage contained in a pool. At any time 90 days or more after default of any pooled mortgage the issuer may, at its option, repurchaser such mortgage from the pool for an amount equal to the unpaid principal balance of the mortgage. The securities shall provide for specific maturity dates and dates upon which payments are to be made to the holders.

(b) *Issue amount.* Each issue of securities shall be in an amount no less than $1 million. The total original face amount of any issue of securities shall not exceed the aggregate original unpaid principal balances of the mortgages in the pool. Upon mutual agreement of the Association and issuers, arrangements may be made for the consolidation of security issuances backed by similar mortgages, which securities have like interest rates and maturity dates.

(c) *Face amount.* The original face amount of any security shall not be less than $25,000.

(d) *Transferability.* The securities are freely transferable and assignable, but only on the books and records of the Association and the issuer.

§ 390.44 Pool Administration.

Administration of the securities and the pooled mortgages shall be in accordance with the provisions of § 390.9 (Pool Administration).

§ 390.45 Guaranty.

With respect to Modified Pass-Through Securities—Graduated Payment Mortgages, the Association guarantees the timely monthly payment, whether or not collected, of the scheduled interest and principal installments, and any prepayments or other early recoveries of principal on the mortgages, as undertaken in the Association's guaranty appearing on the face of the instruments. The Association's guaranty is backed by the full faith and credit of the United States.

§ 390.46 Default.

Any failure or inability of an issuer to make fixed or other payments to securities holders when due shall be deemed an event of default under the guaranty agreement entered into between the Association and the issuer. Such other failures or inabilities of the issuer to perform any function or duty provided for in the guaranty agreement may also be deemed an event of default. Upon any default by an issuer, and payment by the Association under its guaranty, or any failure of the issuer to comply with the terms of the guaranty transaction, the Association may institute a claim against the issuer's fidelity bond, or may extinguish all right, title, or other interest of the issuer in the pooled mortgages, subject only to unsatisfied rights therein of the securities holders, by letter to the issuer making the mortgages the absolute property of the Association, or the Association may do both.

§ 390.47 Fees.

The Association may impose application fees, guaranty fees, securities transfer fees, and such other fees as it may deem appropriate.

3. It is proposed that the current Subpart C be redesignated as Subpart D as follows:

Subpart D—Miscellaneous provisions

§ 390.50 Audits and reports.

The Association may at any time audit the books and examine the records of any issuer, mortgage servicer, trustee, or agent or other person bearing on its guaranty of mortgage-backed securities, and may require periodic reports from such persons.

§ 390.51 Applications.

Applications for guaranty should be submitted to the Association's home office located at 451 Seventh Street, SW., Washington, D.C. 20410.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 26, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 78-36277 Filed 12-28-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-229-76]

INDIRECT FOREIGN TAX CREDIT FOR DIVIDENDS FROM LESS DEVELOPED COUNTRY CORPORATIONS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the foreign tax credit for domestic corporate shareholders of certain foreign corporations. These regulations would conform the existing regulations to the changes made to the applicable law by the Tax Reform Act of 1976 and would affect all domestic corporations receiving dividends or deemed distributions from corporations which were less developed country corporations.

DATES: Written comments and requests for a public hearing must be delivered by February 27, 1979. The amendments are proposed to be effective for taxable years beginning after December 31, 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Diane L. Renfroe of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 78, 902, and 960 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1033 of the Tax Reform Act of 1976 (90 Stat. 1626) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

INDIRECT FOREIGN TAX CREDIT PROVISIONS

Section 902 provides that a domestic corporation which receives a dividend from a foreign corporation in which it owns at least 10 percent of the voting stock, shall be deemed to have paid a portion of the foreign income taxes paid or deemed paid by the foreign corporation on or with respect to its accumulated profits. Section 960 provides that a domestic corporation which is required to include certain amounts attributable to the earnings and profits of a controlled foreign corporation in its gross income under section 951 (a) shall be deemed to have paid a portion of the foreign taxes paid or deemed paid by such corporation on or with respect to the earnings and profits so included in gross income. Section 78 provides the amount of foreign income taxes deemed paid under sections 902 and 960 shall be included in the gross income of the domestic shareholder.

CHANGES MADE BY THE TAX REFORM ACT OF 1976

Prior to the Tax Reform Act, sections 902 and 960 contained two formulas for determining the amount of the deemed paid credit, one for less developed country corporations, the other for corporations which were not less developed country corporations. Section 1033 of the Tax Reform Act of 1976 repealed the formula for determining the amount of taxes deemed paid on an actual or deemed distribution from a less developed country corporation. Section 1033 also changed the so called gross-up rule under section 78 so that amounts deemed paid on actual or deemed distributions from less developed country corporations would be included in the gross income of a domestic corporation in a similar manner as amounts deemed paid on these distributions from corporations which were not less developed country corporations. Under prior law only taxes deemed paid on actual or deemed distributions from corporations which were not less developed country corporations were included in gross income. Section 1033 also made conforming amendments to sections 535 and 545 of the Code. The regulations under these sections have been amended accordingly.

TRANSITIONAL RULE

Section 1033 provided for a transitional period in which certain distributions from first-tier corporations made before January 1, 1978, would have the benefit of the old rules for less developed country corporations. These proposed regulations explain this rule and provide examples of its application.

DRAFTING INFORMATION

The principal author of this regulation is Diane L. Renfroe of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.78-1 is amended by deleting the words "section 902(a)(1) and § 1.902-1(b)(2)" and "section 902(a)(1)" each place they appear and inserting "section 902(a) in accordance with §§ 1.902-1 and 1.902-2" in lieu thereof; and by deleting the words "section 960(a)(1)(C) and the regulations thereunder" and "section 960(a)(1)(C)" each place they appear and inserting in lieu thereof "section 960(a)(1) in accordance with § 1.960-7".

Par. 2. Section 1.535-2(a)(2)(ii) is amended by striking the words "section 902(a)(1) or section 960(a)(1)(C)." and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902-1 and 1.902-2 or section 960(a)(1) in accordance with § 1.960-7."

Par. 3. Section 1.545-2(a)(3)(ii) is amended by striking out the words "section 902(a)(1) or section 960(a)(1)(C)." and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902-1 and 1.902-2 or section 960(a)(1) in accordance with § 1.960-7."

Par. 4. Section 1.902-1 is amended as follows:

1. Paragraph (a) is amended by deleting subparagraph (6) and by redesignating subparagraphs (7) and (8) as subparagraphs (6) and (7) respectively.

2. Paragraph (b) is amended by deleting the words "or (3)" following the words "(b)(2)" in subparagraphs (1)(i) and (1)(iv); by deleting the words "section 902(a)(1)" in subparagraph (1)(iii) and inserting in place thereof "section 902(a)"; by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

3. Paragraph (c) is amended by deleting the words "and (3)" following the words "paragraph (b)(2)" and the words "or (3)" following the words "paragraph (c)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

4. Paragraph (d) is amended by deleting the words "and (3)" following the words "(c)(2)" and the words "or (3)" following the words "(d)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

5. Paragraph (e) is revised to read as set forth below.

6. Paragraph (f) is revised to read as set forth below.

7. Paragraph (j) is amended by deleting the words "or (3)" which follow the words "paragraph (b)(2)".

8. Paragraph (k) is amended as follows:

a. By deleting the words ", not a less developed country corporation" which follow the words "foreign corporation A" in examples (1), (3), and (5);

b. By deleting the words "sec. 902(a)(1)" in examples (1), (3), and (5), and inserting in place thereof "sec. 902(a)";

c. By revising example (2) to read as set forth below;

d. By deleting the words "sec. 902(b)(1)(A)" in example (3) and inserting in place thereof the words "sec. 902(b)(1)";

e. By deleting example (4);

f. By redesignating "Example (5)" as "Example (4)";

g. By deleting the words ", a less developed country corporation," which follow the words "foreign corporation B" and which follow the words "foreign corporation C" in example (4) as redesignated;

h. By deleting example (6);

i. By deleting each reference to the date "1975" as it appears in examples (1), (3), and (4) (as redesignated) and inserting in place thereof "1978";

j. By deleting each reference to the date "1973" or "1974" as it appears in example (4) as redesignated, and inserting in place thereof the date "1976" or "1977" respectively.

9. Paragraph (l) is amended by deleting the word "This" at the beginning of the first sentence and inserting in place thereof the words "Except as provided in § 1.902-2, this".

The revised provisions read as follows:

§ 1.902-1 Credit for domestic corporate shareholder of a foreign corporation.

* * * * *

(b) *Domestic shareholder owning stock in a first-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a domestic shareholder.* To the extent dividents are paid by a first-tier corporation to its domestic shareholder out of accumulated profits, as defined in paragraph (e) of this section, for any taxable year, the domestic shareholder shall be deemed to have paid the same proportion of any foreign income taxes paid, accrued or deemed, in accordance with paragraph (c)(2) of this section to be paid by such first-tier corporation on or with respect to such accumulated profits for such year which the amount of such dividends (determined without regard to the gross-up under section 78) bears to the amount by which such accumulated profits exceed the amount of such taxes (other than those deemed, under paragraph (c)(2) of this section, to be paid). For determining the amount of foreign income taxes paid or accrued by such first-tier corporation on or with respect to the accumulated profits for the taxable year of such first-tier corporation, see paragraph (f) of this section.

(c) *First-tier corporation owning stock in a second-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a first-tier corporation.* A first-tier corporation which receives dividends in any taxable year from its second-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid, accrued, or deemed, in accordance with paragraph (d)(2) of this section, to be paid by its second-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the second-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the second-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such second-tier corporation on or with respect to the accumulated profits for the taxable year of such second-tier corporation, see paragraph (f) of this section.

(d) *Second-tier corporation owning stock in a third-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a second-tier corporation.* For purposes of applying paragraph (c)(2) of this section to a first-tier corporation, a second-tier corporation which receives dividends in its taxable year from its third-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid or accrued by its third-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the third-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the third-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such third-tier corporation on or with respect to the accumulated profits for the taxable year of such third-tier corporation, see paragraph (f) of this section.

(e) *Determination of accumulated profits of a foreign corporation.* The accumulated profits for any taxable year of a first-tier corporation and the accumulated profits for any taxable year of a second-tier or third-tier corporation, which are taken into account in applying paragraph (c)(2) or (d)(2) of this section with respect to such first-tier corporation, shall be the sum of—

(1) The earnings and profits of such corporation for such year, and

(2) The foreign income taxes imposed on or with respect to the gains, profits, and income to which such earnings and profits are attributable.

(f) *Taxes paid on or with respect to accumulated profits of a foreign corporation.* For purposes of this section, the amount of foreign income taxes paid or accrued on or with respect to the accumulated profits of a foreign corporation for any taxable year shall be the entire amount of the foreign income taxes paid or accrued for such year on or with respect to such gains, profits, and income. For purposes of this paragraph (f), the gains, profits, and income of a foreign corporation for any taxable year shall be determined after reduction by any income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, and income by the United States.

* * * * *

(k) *Illustrations.* * * *

Example (2). The facts are the same as in example (1), except that M Corporation also owns all the one class of stock of foreign corporation B which also uses the calendar year as the taxable year. Corporation B has accumulated profits, pays foreign income taxes, and pays dividends for 1978 as summarized below. For 1978, M Corporation is deemed under paragraph (b)(2) of this section, to have paid $20 of the foreign income taxes paid by A Corporation for 1978 and to have paid $50 of the foreign income taxes paid by B Corporation for 1978; and includes $70 in gross income as a dividend under section 78, determined as follows:

B CORPORATION

Gains, profits and income	$200
Foreign income taxes imposed on or with respect to gains, profits, and income	100
Accumulated profits	200
Foreign income taxes paid by B Corp. on or with respect to accumulated profits	100
Accumulated profits in excess of foreign income taxes	100
Dividends paid to M Corp	50
Foreign income taxes of B Corporation deemed paid by M Corporation under section 902(a) ($100 × $50/$100)	50

M CORPORATION

Foreign income taxes deemed paid under sec. 902(a):	
Taxes of A Corp. (from example (1))	$20
Taxes of B Corp. (as determined above)	50
Total	70
Foreign income taxes included in gross income under sec. 78 as a dividend:	
Taxes of A Corp. (from example (1))	20
Taxes of B Corp	50
Total	70

* * * * *

Par. 5. Section 1.902-2 is revised to read as set forth below.

§ 1.902-2 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

(a) *In general.* If a domestic shareholder receives a distribution from a first-tier corporation before January 1, 1978, in a taxable year of the domestic shareholder beginning after December 31, 1964, which is attributable to accumulated profits of the first-tier corporation for a taxable year beginning before January 1, 1976, in which the first-tier corporation was a less developed country corporation (as defined in 26 CFR § 1.902-2 rev. as of April 1, 1978), then the amount of the credit deemed paid by the domestic shareholder with respect to such distribution shall be calculated under the rules relating to less developed country corporations contained in (26 CFR § 1.902-1 rev. as of April 1, 1978).

(b) *Combined distributions.* If a domestic shareholder receives a distribution before January 1, 1978, from a first-tier corporation, a portion of which is described in paragraph (a) of this section, and a portion of which is attributable to accumulated profits of the first-tier corporation for a year in which the first-tier corporation was not a less developed country corporation, then the amount of taxes deemed paid by the domestic shareholder shall be computed separately on each portion of the dividend. The taxes deemed paid on that portion of the dividend described in paragraph (a) shall be computed as specified in paragraph (a). The taxes deemed paid on that portion of the dividend described in this paragraph (b), shall be computed as specified in § 1.902-1.

(c) *Distributions of a first-tier corporation attributable to certain distributions from second- or third-tier corporations.* Paragraph (a) shall apply to a distribution received by a domestic shareholder before January 1, 1978, from a first-tier corporation out of accumulated profits for a taxable year beginning after December 31, 1975, if:

(1) The distribution is attributable to a distribution received by the first-tier corporation from a second- or third-tier corporation in a taxable year beginning after December 31, 1975,

(2) The distribution from the second- or third-tier corproation is made out of accumulated profits of the second- or third-tier corporation for a taxable year beginning before January 1, 1976, and

(3) The first-tier corporation would have qualified as a less developed country corporation under section 902(d) (as in effect on December 31, 1975), in the taxable year in which it received the distribution.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). M, a domestic corporation owns all of the one class of stock of foreign corporation A. Both corporations use the calendar year as the taxable year. A Corporation pays a dividend to M Corporation on January 1, 1977, partly out of its accumulated profits for calendar year 1976 and partly out of its accumulated profits for calendar year 1975. For 1975 A Corporation qualified as a less developed country corporation under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (a) and (b) of this section to have paid $63 of foreign income taxes paid by A Corporation on or with respect to its accumulated profits for 1976 and 1975 and M Corporation includes $36 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

1976

Gains, profits, and income of A Corp. for 1976	$120.00
Foreign income taxes imposed on or with respect to such gains, profits, and income	36.00
Accumulated profits	120.00
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)	36.00
Accumulated profits in excess of foreign income taxes	84.00
Dividend to M Corp. out of 1976 accumulated profits	84.00
Foreign income taxes of A for 1976 deemed paid by M Corp. ($84/$84 × $36)	36.00
Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp.	36.00

1975

Gains, profits, and income of A Corp. for 1975	$257.14
Foreign income taxes imposed on or with respect to such gains, profits, and income	77.14
Accumulated profits	180.00
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits ($77.14 × $180/$257.14)	54.00
Dividends paid to M Corp. out of accumulated profits of A Corp. for 1975	90.00
Foreign income taxes of A Corp. for 1975 deemed paid by M Corp. ($54 × $90/$180)	27.00
Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp.	0

Example (2). The facts are the same as in example (1), except that the distribution from A Corporation to M Corporation on January 1, 1977, was from accumulated profits of A Corporation for 1976. A Corporation's accumulated profits for 1976 were made up of income from its trade or business, and a dividend paid by B, a second-tier corporation in 1976. The dividend from B Corporation to A Corporation was from accumulated profits of B Corporation for 1975. A Corporation would have qualified as a less developed country corporation for 1976 under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (b) and (c) of this section to have paid $543 of the foreign taxes paid or deemed paid by A Corporation on or with respect to its accumulated profits for 1976, and M Corporation includes $360 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

Total gains, profits, and income of A Corp. for 1976	$1,500
Gains and profits from business operations	1,200
Gains and profits from dividend A Corp. received in 1976 from B Corp. out of accumulated profits of B Corp. for 1975	300
Foreign taxes imposed on or with respect to such profits and income	450
Foreign taxes paid by A Corp. attributable to gains and profits from A Corp.'s business operations	360
Foreign taxes paid by A Corp. attributable to dividend from B Corp. in 1976	90
Dividends from A Corp. to M Corp. on Jan. 1, 1977	1,050
Portion of dividend attributable to gains and profits of A Corp. from business operations ($1,200/$1,500 × $1,050)	840
Portion of dividends attributable to gains on profits of A Corp. from dividend from B Corp. ($300/$1,500 × $1,050	210

(a) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on A Corp.'s gains and profits for 1976 from business operations.*

Gains, profits, and income of A Corp. from business operations	$1,200
Foreign income taxes imposed on or with respect to gains, profits, and income	360
Accumulated profits	1,200
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)	360
Accumulated profits in excess of foreign income taxes	840
Dividend to M Corp.	840
Foreign taxes of A Corp. deemed paid by M Corp. ($360 × $840/$840)	360
Foreign taxes included in gross income of M Corp. under sec. 78 as a dividend	360

(b) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on portion of the dividend attributable to B Corp.'s accumulated profits for 1975.*

B Corp. (second-tier corporation):	
Gains, profits, and income for calendar year 1975	1,000
Foreign income taxes imposed on or with respect to gains, profits, and income	400
Accumulated profits	600
Foreign income taxes paid by B Corp. on or with respect to its accumulated profits ($400 × 600/1,000)	240
Dividend to A Corp. in 1976	300
Foreign taxes of B Corp. for 1975 deemed paid by A Corp. ($240 × $300/$600)	120
A Corp. (first-tier corporation):	
Gains, profits, and income for 1976 attributable to dividend from B Corp.'s accumulated profits for 1975	300

Foreign income taxes imposed on or with respect to such gains, profits, and income	90
Accumulated profits	210
Foreign taxes paid by A Corp. on or with respect to such accumulated profits ($90 × $210/$300)	63
Foreign income taxes paid and deemed to be paid by A Corp. for 1976 on or with respect to such accumulated profits ($120 + $63)	183
Dividend paid to M Corp. attributable to dividend from B Corp. out of accumulated profits for 1975	210
Foreign taxes of A Corp. deemed paid by M Corp. ($183 × $210/$210)	183
Amount included in gross income of M Corp. under sec. 78	0

Par. 6. Section 1.960-1 is amended as follows:

1. Paragraph (b) is amended by deleting subparagraph (4).

2. Paragraph (c) is amended as follows:

a. By revising subparagraph (2) (i) to read as set forth below;

b. By deleting subparagraph (2) (ii);

c. By deleting the words ", not a less developed country corporation" which follows the words "foreign corporation A" in examples (1), (3), (5), and (6) of subparagraph (4);

d. By deleting the words "section 960 (a) (1) (C)" or "sec. 960 (a) (1) (C)" each place they appear in examples (1), (3), (5), and (6) of subparagraph (4) and inserting in place thereof "section 960 (a) (1)" or "sec. 960 (a) (1)";

e. By deleting example (2) and example (4) of subparagraph (4);

f. By redesignating "Example (3)" as "Example (2)", "Example (5)" as "Example (3", "Example (6)" as "Example (4)"; and

g. By deleting the words ", not a less developed country corporation" which follow the words "corporation B" in example (3) as redesignated.

h. By deleting the date "1965" each place it appears in example (1) and examples (2), (3), and (4) as redesignated and inserting in lieu thereof "1978".

3. Paragraph (e) is deleted.

4. Paragraphs (f), (g), and (h) are redesignated as paragraphs (e), (f), and (g) respectively.

5. Paragraph (i) is amended by redesignating it paragraph (h); by deleting the words "section 960 (a) (1) (C)" in subparagraph (1) (ii) and inserting in place thereof "section 960 (a) (1)"; by deleting the words ", and A Corporation is not a less developed country corporation for 1965" following the words "taxable year" in the example contained in subparagraph (3); by deleting the words "section 960 (a) (1) (C)" each place they appear in that example and inserting in place thereof "section 960 (a) (1)"; and by deleting the date "1965" each place it appears in that example and inserting in place thereof "1978".

§ 1.960-1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(c) *Amount of foreign income taxes deemed paid by domestic corporation in respect of earnings and profits of foreign corporation attributable to amount included in income under section 951*—(1) *In general.* * * *

(2) *Taxes paid or accrued on or with respect to earnings and profits of foreign corporation.* For purposes of subparagraph (1) of this paragraph, the foreign income taxes paid or accrued by a first-tier corporation or its second-tier corporation, as the case may be, on or with respect to its earnings and profits for its taxable year shall be the total amount of the foreign income taxes paid or accrued by such foreign corporation for such taxable year.

* * * * *

§ 1.960-2 (Amended).

Par. 7. Paragraph (e) of § 1.960-2 is amended as follows:

1. The words "examples (7) and (8)" in the first sentence are deleted and the words "examples (6) and (7)" are inserted in place thereof.

2. Example (2) is deleted.

3. Examples (3), (4), (5), (6), (7), and (8) are redesignated as examples (2), (3), (4), (5), (6), and (7), respectively.

4. The words ", not a less developed country corporation" which follow the words "foregin corporation A" in example (1), and examples (2), (3), (4), (5), (6), and (7) as redesignated are deleted.

5. The words "section 960(a)(1)(C)", or "sec. 960(a)(1)(C)", or "section 902(a)(1)" or "sec. 902(a)(1)" are deleted each place they appear in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the words "section 960(a)(1)" or "sec. 960(a)(1)" or "section 902(a)" or "sec. 902(a)" are inserted in place thereof respectively.

6. The date "1965" is deleted each place it appears in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the date "1978" is inserted in place thereof.

§ 1.960-3 (Amended)

Par. 8. Section 1.960-3 is amended by deleting the words "section 960(a)(1)(C)" and "section 902(a)(1)" each place they appear and inserting in place thereof "section 960(a)(1)" or "section 902(a)" respectively; by deleting the words ", not a less developed country corporation" following the words "corporation A" in examples (1) and (2) of paragraph (c); and by deleting the date "1965" each place it appears in examples (1) and (2) of paragraph (c) and inserting in lieu thereof "1978".

§ 1.960-4 (Amended)

Par. 9. Paragraph (f) of § 1.960-4 is amended by deleting example (4); by deleting the words ", not a less developed country corporation" which follow the words "corporation A" in examples (1) and (3); by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear in examples (1), (2), and (3), and inserting in place thereof "section 960(a)(1)" or "section 960(a)(1)" respectively; by deleting "section 904(d)" each place it appears in example (2) and inserting in place thereof "section 904(c)"; and by deleting the dates "1962", "1963", "1964", "1965", "1966", and "1967" each place they appear in examples (1), (2), and (3), and inserting in place thereof "1975", "1976", "1977", "1978", "1979", and "1980" respectively.

§ 1.960-5 (Amended)

Par. 10. Paragraph (b) of § 1.960-5 is amended by deleting the words ", not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" and inserting the words "section 960(a)(1)" in place thereof; and by deleting the dates "1965" and "1966" each place they appear and inserting in place thereof "1978" and "1979" respectively.

§ 1.960-6 (Amended)

Par. 11. Paragraph (b) of § 1.960-6 is amended by deleting the words ", not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear and inserting in place thereof the words "section 960(a)(1)" or "sec. 960(a)(1)" respectively; by deleting the dates "1965" and "1966" each place they appear and inserting in lieu thereof "1978" and "1979" respectively.

Par. 12. Section 1.960-7 is added immediately after § 1.960-6 to read as follows:

§ 1.960-7 Effective dates.

(a) *General rule.* Except as provided in paragraph (b), the rules contained in §§ 1.960-1—1.960-6 shall apply to taxable years of foreign corporations beginning after December 31, 1962, and taxable years of U.S. corporate shareholders within which or with which the taxable year of such foreign corporation ends.

(b) *Exception for less developed country corporations.* If for any taxable year beginning after December 31, 1962, and before January 1, 1976, a first tier foreign corporation qualified

as a less developed country corporation as defined in 26 CFR 1.902-2 revised as of April 1, 1978, the rules pertaining to less developed country corporations contained in 26 CFR 1.960-1—1.960-6 revised as of April 1, 1978, shall apply to any amounts required to be included in gross income under section 951 for such taxable year.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-36193 Filed 12-28-78; 8:45 am]

[4830-01-M]

[26 CFR Part 1]

[LR-207-78]

BAD DEBT RESERVES OF THRIFT INSTITUTIONS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed amendment to regulations relating to additions to reserves for losses on loans of mutual savings banks, domestic building and loan associations, and cooperative banks. Existing regulations were published on May 18, 1978. The amendment would modify a provision of the existing regulations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 27, 1979. The amendment is proposed to be effective for net operating losses that arise in taxable years beginning after December 31, 1977.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, (LR-207-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Lawrence M. Axelrod of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 593 of the Internal Revenue Code of 1954. These amendments are proposed to modify existing regulations § 1.593-6A(b)(5)(vi) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Existing regulations under section 593, as amended by section 432(a) of the Tax Reform Act of 1969, were published in the FEDERAL REGISTER on May 18, 1978 (43 FR 21453). Certain provisions of the existing regulations were made effective for taxable years beginning after December 31, 1977, to prevent hardship which could result if taxpayers were required to file amended returns for prior years. However, it was never intended that a net operating loss which arises in taxable years beginning after that date could be carried back to a prior taxable year without an adjustment to the prior year's percentage-of-taxable-income bad debt deduction. To the extent that the existing regulations do not reflect this decision, the proposed amendment would correct the regulations.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commisioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is Lawrence M. Axelrod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.593-6A [Amended]

Section 1.593-6A(b)(5)(vi) is amended by deleting the words "to such year under section 172" and inserting in their place the words "to such year from a taxable year beginning before January 1, 1978".

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-36196 Filed 12-26-78; 9:31 am]

[4830-01-M]

[26 CFR Part 1]

AMORTIZATION OF EXPERIENCED GAINS BY PENSION PLANS FUNDED BY GROUP DEFERRED ANNUITY CONTRACTS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the determination of actuarial cost under the minimum funding standards. The proposed regulations implement provisions of the Employee Retirement Income Security Act of 1974. The regulations would provide the public with guidance needed to comply with that Act and would affect defined benefit pension plans funded by group deferred annuity contracts.

DATES: Written comments and requests for public hearing must be delivered or mailed by February 27, 1979. The amendments are proposed to be effective generally for plan years beginning after 1975, but earlier (or later) in the case of some plans as provided by the Employee Retirement Income Security Act of 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3589).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(b)(3) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1013 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 914) and are to be issued under the authority of sections 412 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 914 and 68A Stat. 917; 26 U.S.C. 412 and 7805).

The proposed regulations contained in this document will also apply for purposes of section 302 of ERISA (88 Stat. 869).

Section 412 of the Internal Revenue Code of 1954, contained in section 1013

of ERISA, provides minimum funding requirements with respect to certain pension plans. These requirements include the maintenance of a minimum funding standard account. Annually under the account the normal cost of the plan and certain amortization amounts are charged and contributions to the plan and certain other amortization amounts are credited.

In general, this regulation contains specific rules regarding plans funded solely through a group deferred annuity contract. The regulation treats dividends, rate credits, and credits for forfeitures as an actuarial or experienced gain, to be amortized over subsequent plan years through credits to the funding standard account under section 412(b)(3)(B)(ii).

In response to taxpayer inquiries regarding the unique nature of plans funded through a group deferred annuity contract, this regulation is being proposed separately from other regulations that will be proposed relating to the minimum funding standard account.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments are available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. However, it is anticipated that any public hearing will be deferred until the issuance of further proposed regulations regarding section 412. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Thomas F. Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The Income Tax Regulations, 26 CFR Part 1, are amended by adding in the appropriate place the following new section:

§ 1.412(b)(3)-1 Amortization of experience gains in connection with group deferred annuity contracts.

(a) *Experience gain treatment.* Dividends, rate credits, and credits for forfeitures arising in a plan described in paragraph (b) of this section are experience gains described in section 412(b)(3)(B)(ii) (relating to amortization of experience gains).

(b) *Plan.* A plan is described in this paragraph (b) if—

(1) The plan is funded solely through a group deferred annuity contract,

(2) The annual single premium required under the contract for the purchase of the benefits accruing during the plan year is treated as the normal cost of the plan for that year, and

(3) The amount necessary to pay in equal annual installments, over the appropriate amortization period, an amount equal to the single premium necessary to provide all past service benefits not initially funded, together with interest thereon, is treated as the annual amortization amount determined under section 412(b)(2)(B)(i), (ii) or (iii).

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-36051 Filed 12-28-78; 8:45 am]

[4830-01-M]

[26 CFR Part 1]

[LR-207-78]

BAD DEBT RESERVES OF THRIFT INSTITUTIONS

Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to bad debt reserves of thrift institutions. The subject of the public hearing is proposed regulations under section 593 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the FEDERAL REGISTER.

DATES: The public hearing will be held on March 6, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by February 27, 1979.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-207-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 593 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the FEDERAL REGISTER.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by February 27, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m. An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc. 78-36195 Filed 12-26-78; 9:31 am]

[4830-01-M]

[26 CFR Part 20]

[LR-164-74]

DEDUCTIBILITY OF CERTAIN ATTORNEYS' FEES INCURRED BY BENEFICIARIES

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed amendment to the Estate

Tax Regulations relating to the deductibility of administration expenses by an estate. The amendment would clarify the regulations relating to the deduction of attorneys' fees incurred by beneficiaries. The regulation will affect certain taxpayers filing estate tax returns.

DATE: Written comments and requests for a public hearing must be delivered or mailed by Februry 27, 1979. The regulations are proposed to be effective from the date of publication of this document in the FEDERAL REGISTER.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (LR-164-74), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Robert B. Coplan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3287) (Not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains a proposed amendment to the Estate Tax Regulations (26 CFR Part 20) under section 2053 of the Internal Revenue Code of 1954. The amendment is proposed to clarify paragraphs (a) and (c)(3) of § 20.2053-3 of the regulations, and is to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

IN GENERAL

The proposed amendment would revise paragraph (c)(3) of § 20.2053-3, which prohibits, in all cases, the deduction of attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests.

The revision of paragraph (c)(3) of § 20.2053-3 reflects the decision of the Treasury Department to test the deductibility of attorneys' fees incurred by beneficiaries under the general principles of § 20.2053-3(a). That section provides that expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees or devisees, may not be deducted as expenses of administration. Thus, like any other expense, an attorney's fee incurred by a beneficiary that is not essential to the proper settlement of the estate will not be deductible, even if it is approved by a probate court as an expense payable or reimbursable by the estate.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A pubic hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is Robert B. Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENT TO THE REGULATIONS

The proposed amendment to 26 CFR Part 20 is as follows:

PARAGRAPH 1. Paragraph (c)(3) of § 20.2053-3 is revised to read as follows:

§ 20.2053-3 Deduction for expenses of administering estate.

* * * * *

(c) *Attorney's fees.* * * *

(3) Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section.

* * * * *

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-36194 Filed 12-28-78; 8:45 am]

[4510-29-M]

DEPARTMENT OF LABOR

[29 CFR Part 2520]

PENSION AND WELFARE BENEFIT PROGRAMS

Rules and Regulations for Reporting and Disclosure, Plan Description Requirements, Proposed Elimination of Form EBS-1, Extension of Comment Period

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Extension of comment period on proposed rule.

SUMMARY: On November 21, 1978, notice was published in the FEDERAL REGISTER (43 FR 54268) of a proposed revision to final regulations relating to the filing of a plan description under the Employee Retirement Income Security Act of 1974. The revision, if adopted, would eliminate the requirement that employee benefit plans file a plan description form EBS-1 with the Department of Labor.

The November 21, 1978 notice provided a 45-day comment period (expiring on January 5, 1978) to permit interested persons to submit comments concerning the proposal. In order to provide additional time for the submission of public comments, the comment period is hereby extended to January 22, 1979.

DATE: Comments concerning the proposed revision are due on or before January 22, 1979.

ADDRESSES: Written data, views, or arguments concerning any part or all of the proposed revision should be submitted to Proposed Elimination of Form EBS-1, Room C-4526, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216.

All written submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Miriam Freund, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-7901. (This is not a toll-free number.)

Signed at Washington, D.C. this 26th day of December, 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-36330 Filed 12-28-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[46 CFR Part 509]

[Docket No. 78-56]

ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES ATLANTIC AND GULF/EUROPEAN TRADES

Proposed Rulemaking

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission proposes to enact a rule pursuant to section 19(1)(b) of the Merchant Marine Act of 1920 (46 U.S.C. 876(1)(b)) in order to adjust or meet conditions unfavorable to shipping in the foreign trade of the United States which may have arisen from possible illegal acts, rates, and/or practices of the Baltic Shipping Company. This rule proposes to suspend, reject, or cancel tariffs filed with the Commission by Baltic Shipping Company because of the Company's failure to provide certain information and further assurances to the Commission to establish that these possible acts, rates, and/or practices do not exist, and do not constitute conditions unfavorable to the foreign trade of the United States.

DATES: Comments (original and 15 copies) January 22, 1979.

ADDRESS: Send comments to: Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Assistant Secretary, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573 (202) 523-5725.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 (46 U.S.C. 876), as implemented by Part 506 of the Commission's rules (46 CFR Part 506), the Federal Maritime Commission is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are generally set forth in 46 CFR 506.3. Among these are conditions which preclude or tend to preclude a vessel in the foreign trade of the United States from competing in the trade on the same basis as any other vessel, those which are discriminatory or unfair as between carriers, and those which are otherwise unfavorable to shipping in the foreign trade of the United States (46 CFR 506.3(a), (c) and (d)).

The Commission has reason to believe that the Baltic Shipping Company may be engaged in a course of conduct in the United States Atlantic and Gulf/European trades that is violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916. The Commission also has reason to believe that the Baltic Shipping Company may be placing itself beyond effective regulation by its continued failure and refusal to comply fully with investigative orders issued by the Commission.[1]

The Commission has concluded that each of these conditions, *i.e.*, Baltic's possible violations of the Shipping Act, and Baltic's failure to comply with investigative orders, if it exists, constitutes a condition unfavorable to shipping in the foreign trade of the United States.

A. Possible Shipping Act Violations

On April 17, 1978, the Commission issued an Order to Baltic to produce certain information pertaining to its rates and practices in the foreign commerce of the United States. This Order was issued pursuant to section 21 of the Shipping Act, 1916, to investigate the following suspected activities of Baltic: (1) Massive misrating in the U.S. Gulf Coast/North Europe trades; (2) entering into unfiled agreements with other ocean carriers subject to section 15 of the Shipping Act, 1916, pertaining to equipment sharing; and (3) non-compliance with its tariff provisions concerning space charters.[2]

The purpose of the section 21 Order was to determine the extent of these activities, if any, and whether they are continuing. If these activities are still occurring, they are not only violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916,[3] but are also unfavorable to shipping in the foreign trade because they would put Baltic at an unfair competitive advantage over other carriers not engaging in such activities. If these activities are occurring, or have occurred, and if they remain unchecked, other carriers in the foreign trades will be tempted to engage in similar activity on a large scale.

B. Noncompliance With Investigative Order

Baltic has failed repeatedly to comply fully with the Commission's April 17, 1978 Investigative Order.[4] In doing so, Baltic is withholding information essential to an adequate investigation of Baltic's activities in the foreign commerce of the United States and available to the Commission only through Baltic. If the Commission is unable to obtain adequate information from Baltic concerning its activities in U.S. foreign commerce, the Commission cannot effectively carry out its statutory mandate to regulate the activities of Baltic as an ocean carrier in U.S. foreign commerce. Baltic's repeated failure to provide information places it at an unfair competitive advantage over other carriers because Baltic can, through non-disclosure of information, more easily avoid the consequences, under the Shipping Act, 1916, and other United States laws, of engaging in lucrative but unlawful competitive or anti-competitive practices. If Baltic is not brought within effective regulation by the Commission, other carriers in the foreign trades will be tempted to place themselves beyond effective regulation by similarly failing or refusing to provide information ordered by the Commission.

Commission Action

If the conditions described above exist and are allowed to continue unchecked, a severe disruption of the foreign trades of the United States would result.

To ensure that Baltic's practices in the foreign commerce of the United States can be investigated adequately, and to ensure that the Commission can effectively enforce sections 15, 16, 17 and 18 of the Shipping Act, 1916, as they apply to Baltic's activities, Baltic will be required to file certain information with the Commission. If the Commission cannot obtain this information, it will conclude that it cannot effectively regulate the activities of Baltic. If the Commission cannot regulate Baltic, it cannot adequately protect the merchant marine of the United States from unfair and illegal

[1] These investigative orders seek information which is critical to a Commission determination as to whether or not Baltic is engaged in practices violative of the Shipping Act, 1916.

[2] These activities were suspected on the basis of information received by the Commission from various sources, including a staff examination of documents relating to Baltic shipments to U.S. Gulf ports.

[3] Misrating of cargo, especially if it occurs intentionally and on a large scale, can be an effective form of illegal rebating to shippers. If some shippers, cargo, or ports are favored with lower rates through misrating, while other similarly situated shippers, cargo or ports are not, undue preferences or advantages may result, in violation of section 16 of the Shipping Act, and unjust discriminations may result, in violation of section 17 of the Shipping Act. To the extent that misrating results in a different charge than would be applicable if the correct tariff item on file with the Commission were used, section 18 of the Shipping Act is violated. To the extent that Baltic has entered into agreements or cooperative working arrangements with other carriers subject to section 15 of the Shipping Act without first filing such agreements or arrangements for approval by the Commission, Baltic has violated section 15 of the Shipping Act. Noncompliance with tariff provisions is violative of section 18 of the Shipping Act.

[4] *See In Re: Baltic Shipping Company—Rates and Practices in the U.S. Gulf Coast/North Europe Trade*, (FMC Docket No. 78-36).

competition, and it cannot safeguard the foreign trade of the United States against instability, except by excluding Baltic from the foreign trade until such time as Baltic can be effectively regulated.

By letter dated November 29, 1978, the Commission notified the Secretary of State of the Commission's findings in this matter and asked the Department of State to seek diplomatic resolution of the problem. To date, the efforts of the State Department have been unavailing in producing the information needed by the Commission.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(1)(b)) and section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), the Commission proposes to enact Part 509, Title 46 CFR, as follows:

PART 509—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES ATLANTIC AND GULF/EUROPEAN TRADES

Sec.

509.1 Conditions Unfavorable to shipping in the foreign trade of the United States.
509.2 Production of information.
509.3 Rejection, suspension, or cancellation of tariffs.

AUTHORITY: Commission General Order No. 33 (46 CFR Part 506), section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(1)(b)), section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), and Reorganization Plan No. 7 of 1961 (75 Stat. 840).

§ 509.1 Conditions Unfavorable to Shipping in the Foreign Trade of the United States.

The Federal Maritime Commission has determined that the Baltic Shipping Company, also doing business as Balt-Atlantic Line, Balt-Gulf Line, and Baltic Middle East Line, (hereinafter referred to collectively as Baltic) may have created conditions unfavorable to shipping in the foreign trade of the United States by: (a) Engaging in certain suspected activities in the United States Atlantic and Gulf/European trades (hereinafter also meant to include the United States Atlantic and Gulf/Middle East trades) which may be violative of sections 15, 16, 17 and 18 of the Shipping Act, 1916;[5] and (b) apparently placing itself beyond effective regulation by the Federal Maritime Commission by failing or refusing to provide information demanded by a lawful Commission Order concerning its activities in the foreign commerce of the United States.

§ 509.2 Production of Information.

Pursuant to § 506.11 of this Chapter (46 CFR 506.11), the Commission has determined that receipt by the Commission of the following information is necessary in order for the Commission to determine whether either or both of the conditions described in § 509.1 exist in fact or may be developing:

(a) The information sought in paragraphs (A)(3)(e), (B)(1) through (B)(3), (C)(1) and (C)(2) of the Commission's Order of April 17, 1978 concerning Baltic's rates and practices in the U.S. Gulf/North Europe Trade, as modified by its Order of May 26, 1978;

(b) Duplicate bills of lading for all cargo carried by Baltic to and from United States Atlantic and Gulf ports for a twelve-month period commencing ninety (90) days from the effective date of this Part. Such bills of lading shall indicate on their face, or on an attached sheet, the tariff and tariff item number used to determine the rate assessed each item of cargo reflected on the bill of lading; and

(c) Any other information or argument Baltic wishes to submit for the Commission's consideration in determining whether the conditions described in § 509.1 exist, and whether such conditions are unfavorable to the foreign trade of the United States.

§ 509.3 Rejection, suspension, or cancellation of tariffs.

(a) The Commission has determined that if it does not receive all of the information described in paragraph (a) of § 509.2, and adequate assurances that it will receive, and continue to receive, the information described in paragraph (b) of § 509.2, within *30 days* after the effective date of this part, then the conditions described in § 509.1 are found to exist and to be unfavorable to the foreign trade of the United States, pursuant to § 506.12 of the Commission's rules, effective 31 days from the effective date of this part.

(b) On the effective date of the finding made pursuant to paragraph (a) of this § 509.3, the following tariffs and all amendments thereto are suspended in full, until such time as the information specified in § 509.2(a) is provided, and adequate assurances are received by the Commission that the information specified in § 509.2(b) will be provided:

I. *Baltic Shipping Company*, FMC Tariff Nos. 32 and 38.
II. *Baltic Shipping Company dba Balt-Atlantic Line*, FMC Tariff Nos. 3, 4, 5, 7, 13, 14, 16, 17, 22, 23, 33, 34, 39, 43, 44, 45, 46, 47, 49, 50 and 51.
III. *Baltic Shipping Company dba Balt-Gulf Line*, FMC Tariff Nos. 36, 37, 40 and 48.
IV. *Baltic Shipping Company dba Baltic Middle East Line*, FMC Tariff No. 31.

(c) All affected conference or rate agreement tariffs shall be amended to reflect the suspension of Baltic's participation upon the effective date of the finding made pursuant to paragraph (a) of this § 509.3. This section would suspend, as to all sailings commencing on or after the effective date of this section, all tariff rates, charges and rules as they apply to Baltic in the trades between the United States Atlantic and Gulf Coasts and Europe. Until such time as Baltic furnishes the information and assurance sought under § 509.2, any tariffs subsequently submitted by or in behalf of Baltic in the trades between United States Atlantic and Gulf Coasts and Europe are within the scope of this Part and will be rejected or suspended upon filing.

(d) Operation by Baltic under suspended, cancelled, or rejected tariffs, or any other act or omission by Baltic inconsistent with this part, the Shipping Act, 1916, or any other law of the United States or political subdivision thereof, shall subject Baltic to all applicable remedies and penalties provided by law.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-36223 Filed 12-28-78; 8:45 am]

[5] The suspected activities referred to herein are as follows: (1) Intentional and widespread misrating of cargo carried to and from United States Atlantic and Gulf ports in order to provide unlawful inducements or advantages to certain shippers or classes of cargo, in violation of sections 16, 17, and 18 of the Shipping Act, 1916; (2) Entering into an unknown number of unfiled agreements with other ocean carriers concerning the sharing of ocean transport equipment, in violation of section 15 of the Shipping Act; and (3) Habitual non-compliance with tariff provisions setting forth requirements for space charters, in violation of section 18 of the Shipping Act.

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21136]

NATURE OF EDUCATIONAL BROADCAST STATIONS

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving the Commission's policy concerning the nature of educational broadcast stations. Petitioner, Public Broadcasting Service, states that the additional time is needed so that it can file more comprehensive and carefully considered comments.

DATES: Comments must be filed on or before January 8, 1979, and reply

comments on or before February 8, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Jeffrey Malickson, Broadcast Bureau, 202-632-7551.

SUPPLEMENTARY INFORMATION:

Adopted: December 21, 1978.

Released: December 21, 1978.

In the matter of Commission policy concerning Nature of Educational Broadcast Stations, Docket No. 21136.

1. On December 12, 1978, the Commission, by *Order*,[1] denied a request filed by the Educational Broadcasting Corporation, for an extension of time for filing comments and reply comments in the above-entitled proceeding.

2. On December 15, 1978, Public Broadcasting Service ("PBS") filed a petition for reconsideration of the Commission's *Order*. It contends that it filed comments in support of EBC's request for additional time but the Commission's *Order* contained no reference to PBS's reasons which supported EBC's motion. It states that a substantial portion of time has been devoted to the preparation of a questionnaire sent to all PBS members to obtain the information requested by the Commission. PBS asserts that in order to meet the present deadline, members of its staff, its outside counsel and secretarial staff would be required to neglect family obligations during the Christmas and New Year season. It asserts that a thirty-day extension of time will not materially delay the Commission's resolution of the proceeding but would permit PBS to file more comprehensive and carefully considered comments.

3. On the basis of the reasons indicated in PBS's petition for reconsideration, we believe that some additional time is warranted and would help to assure development of a sound and comprehensive record on which to base a decision in this proceeding. However, we believe that an extension of time to and including January 8, 1979, is sufficient for the filing of comments. Since other interested parties may wish additional time to respond to these comments, we shall extend the reply comment date the same amount of time to facilitate their submissions.

4. *Accordingly, it is ordered*, That the petition for reconsideration filed by Public Broadcasting Service in Docket No. 21136, is granted to the extent that the dates for filing comments and reply comments are extended to and including January 8, and February 8, 1979, respectively, and is denied in all other respects.

5. This action is taken pursuant to authority contained in Sections 4(i), 5(d)(1), 303(r) and 405 of the Communications Act of 1934, as amended, and §§ 0.281 and 1.106 of the Commission's rules.

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

[FR Doc. 78-36281 Filed 12-28-78; 8:45 am]

[1] *Order* denying request for extension of time for filing comments and reply comments in Docket No. 21136, was released on December 14, 1978. See 43 FR 36116, August 15, 1978.

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-380; RM-3179]

BROKEN BOW, OKLA.

Proposed Channel (FM)

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of Channel 292A to Broken Bow, Oklahoma, at the request of Chris Daniel. The proposed assignment would provide for a station which could render a first local aural service.

DATES: Comments must be received on or before February 12, 1979, and reply comments on or before March 5, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Broken Bow, Oklahoma), BC Docket No. 78-380, RM-3179.

Adopted: December 12, 1978.

Released: December 21, 1978.

1. The Commission herein considers a petition for rule making[1] filed by Chris Daniel ("petitioner"), proposing the assignment of FM Channel 292A to Broken Bow, Oklahoma. The channel can be assigned in conformity with the minimum distance separation requirements. No responses were made to the proposal.

2. Broken Bow (pop. 2,980), in McCurtain County (pop. 28,642),[2] is located in southeastern Oklahoma, approximately 84 kilometers (52 miles) northwest of Texarkana, Texas. There is no local aural broadcast service in Broken Bow.

3. Petitioner states that Broken Bow is located in a rich timber and agricultural area which provides employment for the majority of its residents. Petitioner has submitted several letters from local businessmen stating their interest and support for the proposed FM assignment to Broken Bow.

4. In light of the above information and the fact that the proposed Channel 292A assignment would provide a first local aural broadcast service to Broken Bow, Oklahoma, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to Broken Bow, as follows:

City	Channel No.	
	Present	Proposed
Broken Bow, Oklahoma		292A

5. Authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

7. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the

[1] Public Notice of the petition was given on August 15, 1978, Report No. 1136.

[2] Population figures are taken from the 1970 U.S. Census.

Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.

[FR Doc. 78-36282 Filed 12-28-78; 8:45 am]

[6712-01-M]

[47 CFR—PART 73]

[Docket No. 20954; RM-2684; RM-2772; RM-2982]

TABLE OF ASSIGNMENTS OF FM BROADCAST STATION IN STAUNTON, VIRGINIA

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding involving proposed FM channel assignments to Staunton, Virginia. Petitioner, Augusta County Broadcasting Corporation, states that the additional time is needed so that it can undertake substantial engineering review of material filed by another party in the proceeding.

DATE: Reply comments must be received on or before January 22, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Stanley Wiggins, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Staunton, Virginia), Docket No. 20954, RM-2684, RM-2772, RM-2982.

Order extending time for filing reply comments.

Adopted: December 21, 1978.

Released: December 21, 1978.

1. On August 17, 1978, the Commission adopted a *Second Further Notice of Proposed Rule Making*, 43 Fed. Reg. 38060, proposing the assignment of Class B FM Channel 259 to Staunton, Virginia. The date for filing comments has expired and the date for filing reply comments is presently December 22, 1978. (43 FR 55428, November 28, 1978)

2. On December 12, 1978, counsel for Augusta County Broadcasting Corporation, licensee of AM Station WTON, Staunton, Virginia, filed a request for an extension of time for filing reply comments to and including January 22, 1979. Counsel states that because of the substantial engineering comments filed by WANV, Inc., a party in the proceeding, it will be necessary for its client to undertake substantial engineering review in order to prepare reply comments.

3. We are of the view that the public interest would be served by this extension so that Augusta County Broadcasting Corporation may file any information which might be helpful to the Commission in reaching a decision in this matter.

4. Accordingly, IT IS ORDERED, that the date for filing reply comments in Docket No. 20954 IS EXTENDED to and including January 22, 1979.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

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

[FR Doc. 78-36250 Filed 12-28-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 662]

PROPOSED AMENDMENT TO EIS/FMP FOR NORTHERN ANCHOVY FISHERY MANAGEMENT PLAN

Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Pacific Fishery Management Council will conduct a public hearing at its January meeting to receive input on a proposed amendment to the Environmental Impact Statement/Fishery Management Plan for Northern Anchovy for the 1979-80 fishing season.

DATES: The public hearing will begin at 7:00 p.m. on January 12, 1979.

ADDRESS: The public hearing will be in the Marina Room of the Shelter Island Inn located at 2051 Shelter Island Drive, San Diego, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 SW Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

SUPPLEMENTARY INFORMATION: For the 1978-79 season, the anchovy fishery is being managed by the "Final Environmental Impact Statement and Fishery Management Plan for the Northern Anchovy Fishery" published

in the FEDERAL REGISTER on July 21, 1978 (43 FR 31651). The Council proposes to amend the plan to include a more precise statement of domestic annual harvest. The amendment would:

1. Increase the expected reduction fleet capacity from 486,000 to 891,492 short tons.
2. Establish the expected live-bait fleet capacity at 7,500 short tons.
3. Increase the expected processing capacity from 208,000 to 359,080 short tons.
4. Establish the expected domestic annual harvest at 202,000 short tons.

Copies of the proposed amendment have been mailed by the Pacific Fishery Management Council to all persons on the Council's Anchovy Plan mailing list. Additional copies are available at the Council office.

Written comments on the proposed amendment should be submitted to the Council, prior to January 26, 1979.

Signed in Washington, D.C. this 20th day of December, 1978.

JACK W. GEHRINGER,
Deputy Assistant Administrator for fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 78-36225 Filed 12-28-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

FOOD DISTRIBUTION

Policy for States' School Year 1979 Commodity Entitlements for School Feeding Programs

The Food and Nutrition Service (FNS) is announcing the dollar value of federally donated food commodities which each State is entitled to receive during the 1979 school year for school lunch and breakfast programs authorized under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. Two separate entitlements, based on the legislative authority under which the donated foods are acquired, have been established: (1) Foods acquired by the Commodity Credit Corporation (CCC) through price-support operations and available under section 416 of the Agricultural Act of 1949, as amended; and (2) the combined entitlement for foods purchased under Section 6 of the National School Lunch Act and Section 32 of Pub. L. 74-320, as amended. The policies and considerations upon which the entitlements have been determined are discussed in the following paragraphs.

General

Planning of USDA commodity acquisition for school feeding programs is based on overall program entitlements, traditional usage, States' and schools' preferences, anticipated market conditions, and budget appropriations. Proposed purchases are consolidated into a purchase docket, which is approved by the CCC Board of Directors and the Secretary of Agriculture. Commodity purchases and allocations are made in accordance with the plans approved in this docket.

Overall Entitlements for Schools

Commodity entitlements are determined on the basis of the estimated number of lunches and breakfasts to be served between July 1 and June 30 of each year in schools participating under regulations for the National School Lunch Program (7 CFR 210) and the School Breakfast Program (7 CFR 220), including those administered by FNS Regional Offices. The entitlements are obtained by multiplying the estimated number of meals by the appropriate value of commodity assistance for each meal. The value per lunch is based on the level specified in Section 6(e) of the National School Lunch Act. The value per breakfast is determined administratively, since Section 8 of the Child Nutrition Act of 1966, which authorizes commodity donations for the School Breakfast Program, does not mandate a specified per-meal level.

Since breakfasts in the School Breakfast Program and lunches served by commodity-only schools (as that term is defined in the regulations for the National School Lunch Program) are eligible for commodity support, foods are allocated for these programs. However, neither USDA, the States, nor schools are required to maintain records to designate the specific program use for each commodity. Therefore, in order to comply with the provisions of Section 6(e), it is assumed that the full entitlement for breakfasts and for lunches served by commodity-only schools is satisfied; any shortfall in entitlement would occur in the National School Lunch Program.

Entitlements are computed early in the school year for the purpose of allocating commodities to States, and they are revised by the following May 15. Revised entitlements are based on the number of lunches and breakfasts actually served and reported to FNS by April 15. For any months not reported, the best data available to FNS at that time will be used. The April 15 cutoff date for receipt of reports permits FNS to process the data on a State by State basis to meet the May 15 deadline, and no information received after that date will be considered. The entitlements are revised in order to comply with the provisions of Section 6(b) of the National School Lunch Act. Section 6(b) of the Act requires the Secretary of Agriculture to make an estimate no later than May 15 of the value of commodities to be delivered for use in school lunch programs during the year; if the national estimated value is less than that required under Section 6(e), cash payments equal to the difference in the total programmed value and the total required value for each State must be made not later than June 15.

The entitlements for all States are totaled to give an overall national entitlement for all commodities and then separated into (1) the Section 416 category and (2) the combined category of Sections 6 and 32.

Section 416 Category

The Section 416 portion of the total entitlement varies from year to year, depending on CCC inventories of price-supported commodities and on States' ability to use the types and varieties of foods available. For the 1979 school year, the Section 416 category will comprise approximately 34 percent of the overall commodity entitlement and is expected to include a minimum of 27 different cereal, grain, dairy, peanut, and oil products. Because foods in this category are expected to be available in sufficient supply to meet this portion of entitlements, any State that does not order the full amount of its Section 416 entitlement will lose the value of the unordered foods.

When Section 416-type commodities are ordered by a State over and above its entitlement in this category, they will be considered as a bonus to that State and will not be counted against its entitlement. The bonus program has been established to assist States which can effectively utilize these types of commodities in greater quantities and help reduce CCC inventories. It is expected to remain in effect as long as large quantities of price-supported foods are available and can be properly utilized.

Sections 6 and 32 Category

Funds available under Sections 6 and 32 are used primarily to purchase nonprice-supported commodities, such as meat, poultry, fruits and vegetables, to safeguard the health and well-being of the Nation's children, to encourage the domestic consumption of nutritious food, and to help stabilize farm prices. In addition, Section 6 mandates that special emphasis be given to high-protein foods, meat, and meat alternates in providing foods for schools. Most of the commodities purchased in this category are allocated to States on a pro rata basis, but some are offered on an as-needed basis. If USDA is able to offer 100 percent of this portion of the overall entitlement on a national basis, any State that does not accept or order all of its share of the entitlement will lose the value of the offered foods. However, if the Department is not able to offer the entire

Sections 6 and 32 entitlement nationally, each State will receive cash payments equal to the difference in value between its share of this portion of the entitlement and the amount of foods in this category actually received.

POLICY

Announcement of States' commodity entitlements by category for school feeding programs will be published in the FEDERAL REGISTER each year. Publication of cash-in-lieu of commodity payments to States, if any, will also be made in the FEDERAL REGISTER. The policies for determining entitlements shown in the following tables will remain as set forth above until further notice. However, the national percentage for each category will be reevaluated each year on the basis of the types and varieties of commodities available.

Effective date: This notice is effective as of July 1, 1978.

Dated: December 21, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[3104-30-C]

SCHOOL ENTITLEMENT--FY 1979

REGION/STATE	TOTAL ENTITLEMENT	SECTION 416 ENTITLEMENT	SECTION 6 AND 32 ENTITLEMENT
NEW ENGLAND			
Connecticut	6,354,709	2,226,588	4,128,121
Maine	3,174,663	1,111,656	2,063,007
Massachusetts	16,500,283	5,781,048	10,719,235
New Hampshire	2,093,979	733,824	1,360,155
Rhode Island	1,697,390	595,140	1,102,250
Vermont	1,346,068	471,744	874,324
TOTAL	31,167,092	10,920,000	20,247,092
MID-ATLANTIC			
Delaware	1,516,033	529,000	987,033
District of Columbia	1,545,753	541,696	1,004,057
Maryland	9,156,811	3,207,856	5,948,955
New Jersey	13,784,439	4,828,712	8,955,727
New York	35,967,182	12,598,664	23,368,518
Pennsylvania	26,637,018	9,327,328	17,309,690
Puerto Rico	10,959,469	3,838,424	7,121,045
Virginia	15,616,455	5,467,744	10,148,711
Virgin Islands	303,686	105,800	197,886
West Virginia	5,350,390	1,874,776	3,475,614
TOTAL	120,837,236	42,320,000	78,517,236
SOUTHEAST			
Alabama	13,300,838	4,659,600	8,641,238
Florida	23,561,168	8,250,000	15,311,168
Georgia	20,560,017	7,198,400	13,361,617
Kentucky	12,039,270	4,215,200	7,824,070
Mississippi	9,629,388	3,370,400	6,258,988
North Carolina	21,743,759	7,616,400	14,127,359
South Carolina	11,180,353	3,916,000	7,264,353
Tennessee	13,632,060	4,774,000	8,858,060
TOTAL	125,646,853	44,000,000	81,646,853
MIDWEST			
Illinois	23,221,225	8,131,500	15,089,725
Indiana	14,902,436	5,218,616	9,683,820
Michigan	16,947,180	5,937,802	11,009,378
Minnesota	12,329 934	4,318,730	8,011,204
Ohio	24,506,436	8,583,250	15,923,186
Wisconsin	11,280,917	3,950,102	7,330,815
TOTAL	103,188,128	36,140,000	67,048,128
SOUTHWEST			
Arkansas	7,154,866	2,505,474	4,649,392
Louisiana	16,454,701	5,764,378	10,690,323
New Mexico	3,926,177	1,374,052	2,552,125
Oklahoma	8,132,149	2,847,710	5,284,439
Texas	36,701,136	12,856,836	23,844,300
New Mexico Bureau of Indian Affairs	542,684	191,550	351,134
TOTAL	72,911,713	25,540,000	47,371,713
MOUNTAIN PLAINS			
Colorado	6,575,433	2,301,810	4,273,623
Iowa	9,863,218	3,451,924	6,411,294
Kansas	---	---	---
Missouri	12,253,357	4,288,802	7,964,555
Montana	2,080,385	727,720	1,352,665
Nebraska	4,341,771	1,520,302	2,821,469
North Dakota	2,016,785	705,572	1,311,213
South Dakota	2,182,403	764,106	1,418,297
Utah	4,845,586	1,695,904	3,149,682
Wyoming	1,037,157	363,860	673,297
TOTAL	45,196,095	15,820,000	29,376,095
WESTERN			
Alaska	678,410	237,310	441,100
American Samoa	203,415	72,442	130,973
Arizona	6,142,643	2,150,778	3,991,865
California	42,817,869	14,988,000	27,829,869
Guam	432,433	152,378	280,055
Hawaii	3,438,172	1,204,036	2,234,136
Idaho	2,161,760	756,894	1,404,866
Nevada	1,440,800	504,596	936,204
Oregon	5,626,434	1,968,424	3,658,010
Trust Territory	481,129	167,366	313,763
Washington	7,936,661	2,777,776	5,158,885
TOTAL	71,359,726	24,980,000	46,379,726
DEPARTMENT OF DEFENSE			
Europe	644,291	229,796	414,495
Okinawa	122,510	43,680	78,830
Japan	18,256	6,524	11,732
TOTAL	785,057	280,000	505,057
GRAND TOTAL	571,091,900	200,000,000	371,091,900

[FR Doc. 79-36123 Filed 12-28-78; 8:45 am]

[3410-11-M]

Forest Service

GILA NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Gila National Forest Grazing Advisory Board will meet at 10:00 A.M., January 18, 1979 in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, New Mexico. This replaces the meeting scheduled for December 19, 1978 that was cancelled due to emergency involving weather conditions.

The agenda for this meeting is:

1. Election of Officers.
2. Development of Bylaws.
3. Responsibilities of the Advisory Board.
4. Other items of general interest.

The meeting will be open to the public.

Dated: December 19, 1978.

ROBERT M. WILLIAMSON,
Forest Supervisor.

[FR Doc. 78-36228 Filed 12-28-78; 8:45 am]

[3410-11-M]

Forest Service

WESTERN SPRUCE BUDWORM SUPPRESSION

Kaibab National Forest, Grand Canyon National Park, Coconino County, Arizona; Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the suppression of a western spruce budworm, *Choristoneura occidentalis* Freeman, epidemic on the Kaibab Plateau. The proposed action involves the entire mixed conifer type on the Kaibab National Forest and adjacent Grand Canyon National Park lands.

A meeting will be held early in the process with interested agencies such as the National Park Service, U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Arizona Department of Highways, and other State and Local Agencies.

16 U.S.C. 594-1 to 594-5 the "Forest Pest Control Act" gives the responsibility for such actions to the Forest Service for all Federal lands. Leonard A. Lindquist, the Forest Supervisor is, therefore, the responsible official, and Cary J. Price, Forest Silviculturalist, will be the team leader for the Environmental Assessment and Statement.

The Draft Environmental Statement is scheduled for completion by February 1, 1979 with a subsequent 60 day review period and the Final Environmental Statement is schedued for filing in April 1979. Suppression Activities are scheduled to proceed in June 1979 to take advantage of the development stage of the budworm at that time.

Comments on the Notice of Intent should be sent to Leonard A. Lindquist, Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona 86046.

LEONARD A. LINDQUIST,
Forest Supervisor.

DECEMBER 12, 1978.

[FR Doc. 78-36301 Filed 12-28-78; 8:45 am]

[3410-37-M]

Office of the Secretary

ADVISORY COMMITTEE ON MEAT AND POULTRY INSPECTION

Reestablishment

Notice is hereby given that the Advisory Committee on Meat and Poultry Inspection is being renewed under provisions of Public Law 92-463. It was previously established pursuant to the authority of section 301(a)(4) (21 U.S.C. 661(a)(4)) of the Wholesome Meat Act (Pub. L. 90-201) and section 5(a)(4) (21 U.S.C. 454(a)(4)) of the Wholesome Poultry Products Act (Pub. L. 90-492).

It is in the public interest to reestablish the Committee on matters pertaining to meat and poultry inspection conducted by USDA and the States as required under the Federal Meat Inspection Act and the Poultry Products Inspection Act. The Committee is required for the purposes of consulting with the Secretary concerning definitions and standards of identity for meat and poultry products; concerning whether conditions under which meat or poultry products are stored and handled under the laws of a State or Territory are adequate to effectuate the purposes of the Acts; concerning whether a State or Territory has at least equal authority under its laws with respect to recordkeeping, access to facilities, registration, and control of firms handling dead, dying, disabled, or diseased carcasses; concerning whether the State inspection program is maintained in an adequate manner; concerning the development of better coordination and more uniformity among the State and Federal programs; and concerning designation of plants which clearly endanger the public health.

The Committee will be composed of persons from private and public sectors in representing scientific and public health organizations, State programs, consumers, and public interest groups.

This Committee will terminate October 6, 1980, unless renewed prior to that date.

This notice is given in compliance with OMB Circular A-63, Revised.

Dated: December 18, 1978.

JOAN S. WALLACE,
Assistant Secretary for Administration.

[FR Doc. 78-36012 Filed 12-28-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-12-140; Dockets 13962, 23229, 33183]

BRITISH WEST INDIAN AIRWAYS LTD.

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 21st day of December, 1978.

British West Indian Airways Limited (BWIA) holds a foreign air carrier permit [1] authorizing: (a) foreign air transportation of persons, property, and mail over the following routes:

1. Between the coterminal points Trinidad, W.I.; Jamaica, W.I; the Cayman Islands, W.I.; British Guiana, South America; and British Honduras, Central America; the intermediate points Barbados, W.I.; Grenada, W.I.; St. Lucia, W.I.; Antigua, W.I.; St. Kitts, W.I.; St. Thomas, Virgin Islands; San Juan, Puerto Rico; Ciudad Trujillo, Dominican Republic; Port-au-Prince, Haiti; Jamaica, W.I.; Cuba; Nassau, the Bahama Islands; and Bermuda; and the terminal point Miami, Florida;

2. Between the terminal point Barbados, W.I., and the terminal point New York, N.Y.;

3. Between the terminal point London, England; the intermediate points Shannon, Eire; Iceland; the Azores; Bermuda; Gander and Montreal, Canada; and the terminal point New York, N.Y.; and beyond New York to the terminal point Jamaica, W.I.; and

4. Between the terminal point Antigua, W.I., and the terminal point New York, N.Y.

and (b) charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

On August 9, 1962, BWIA applied for renewal of its authority to continue operations over segment 4 of its permit. This authority was to expire on October 1, 1962, unless extended by further agreement between the United

[1] Order E-23279, approved February 19, 1966.

States and the United Kingdom.[2] Prior to 1962, BWIA's permit authority was contained in the United States-United Kingdom bilateral agreement ("Bermuda I"), and BWIA was a carrier designated by the United Kingdom. In 1962, Trinidad and Tobago gained independence from the United Kingdom and acquired BWIA as its national carrier. By Exchange of Notes dated September 27 and October 8, 1962, between the United States and Trinidad and Tobago, it was agreed that the routes formerly contained in "Bermuda I" would continue to apply to operations in the Caribbean by United States and Trinidadian carriers.

In 1966, the Board amended BWIA's permit to its present form, Order E-23279, approved February 19, 1966. The Board found that BWIA met the fitness standards of the Act, and that BWIA's services would be in the public interest.

By application filed March 23, 1971, in Docket 23229, BWIA applied for an amendment to its permit. The carrier sought authority to engage in the scheduled foreign air transportation of persons, property, and mail between the terminal point St. Lucia, W.I. and the terminal point New York, New York.

By application filed on August 10, 1978 (Docket 33183), and amended on September 21, 1978, BWIA filed for amendment of its foreign air carrier permit to authorize nonstop foreign air transportation of persons, property, and mail between New York, New York and Trinidad and Tobago.[3] [4]

On August 17, 1978, BWIA filed a motion to have its application in Docket 33183 handled by show cause procedures. This motion sets forth BWIA's arguments for the requested permit amendment. The airline's prime contention is that the existing permit, when interpreted properly, implicitly accords the authority now sought. The present application, then, is designed really just to make the grant explicit and resolve all doubts. In support of this argument, BWIA traces the history of its permit, noting that the authorized routes derive from a period when Trinidad and Tobago were still only parts of the British Caribbean Empire. When the Islands gained their independence in 1962, BWIA's route authority gave rise to an anomalous situation. BWIA had nonstop rights in the fifth freedom markets of Antigua/Barbados-Miami, Barbados-New York, and Antigua-New York, but in only one third and fourth freedom market (Miami-Trinidad), even though Trinidad is BWIA's homeland. This anomaly led BWIA to construe its permit as authorizing nonstop service between Trinidad and New York. BWIA began to operate this service in 1974.[5] No agency of the United States Government questioned this service until late June, 1978.

BWIA also makes a reciprocity argument, noting that U.S.-flag carriers possess nonstop authority in both the New York-Trinidad and Miami-Trinidad markets.

The U.S. Department of State, responding to a request of the Government of Trinidad and Tobago, submitted a statement of position on August 30, 1978, recommending the expeditious granting of BWIA's application in Docket 33183. The Department of State argues the BWIA should be allowed to compete nonstop on an equal basis with U.S. airlines, and that such direct sevice would further the U.S. policy of promoting tourism in the Caribbean to foster economic development in that area.

No other responses to BWIA's application or motion in Docket 33183 have been received. No responses were even received to BWIA's two earlier applications in Dockets 13962 and 23229.

As mentioned previously, in granting BWIA's permit in 1966 (Order E-23279), the Board found that the carrier met the fitness standards of the Act, and that BWIA's services were in the public interest. BWIA's application in Docket 33183 continues to support these findings.

BWIA currently operates five weekly round trips on the New York-Trinidad route, using Boeing 707 equipment. We recognize that a strict reading of the "Bermuda I" Agreement [6] and of BWIA's permit might raise questions as to the validity of the carrier's actions. We accept, however, the BWIA argument (supported by the Government of Trinidad and Tobago) that the unique circumstances of the case call for a less than rigid approach. "Bermuda I" was designed to accomodate a series of West Indian islands united into one political whole. It did not contemplate an independent Trinidad and Tobago. The change in circumstances engendered by Trinidad's independence warrants flexible interpretation. The Government of Trinidad and Tobago chose plausibly to regard the Bermuda treaty as permitting nonstop service between Port-of-Spain and New York. When such service was instituted by BWIA, no American agency questioned it. Our own Department of State feels that it would be in the United States' best interest to let such service continue.

The Board has taken no action on BWIA's application in Dockets 13962 and 23229 primarily because of its concern that the Government of Trinidad and Tobago was not providing total reciprocity to U.S. carriers. The Board now believes there is adequate opportunity for reciprocity to U.S.-flag carriers provided by the Government of Trinidad and Tobago. Thus, we have decided to process all three applications together by show cause procedures with the intent of granting them. To ensure that appropriate controls remain should reciprocity not continue to exist with respect to U.S. air carrier operations, we will limit the permit for Routes 4, 5 and 6 to a period of five years.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

1. It is in the public interest to amend and renew the foreign air carrier permit issued to British West Indian Airways Limited to authorize the carrier to engage in nonstop foreign air transportation of persons, property, and mail between the terminal points Antigua, W.I., St. Lucia, W.I., and Trinidad and Tobago, W.I., respectively, and the terminal point New York, New York;

2. The public interest requires that the exercise of the privileges granted by the amended permit be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

3. British West Indian Airways Limited is fit, willing and able properly to perform the foreign air transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

4. The public interest does not require an oral evidentiary hearing on the application; [7]

5. The amendment and renewal of British West Indian Airways Limited's foreign air carrier permit will not constitute "a major Federal Action significantly affecting the quality of the human environment" within the

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[2] Pursuant to section 9(b) of the Administrative Procedure Act (5 U.S.C. Section 558(c)), BWIA continues to operate over segment 4.

[3] In this application, BWIA states that it is a citizen of the Republic of Trinidad and Tobago; that it is organized under the laws of the Republic; and that it is owned solely by the Government of Trinidad and Tobago.

[4] At present, BWIA's permit allows only one-stop service between New York and Port-of-Spain, via Antigua and Barbados.

[5] This service has been operated in addition to the intermediate stop service which had been offered prior to 1974.

[6] An Exchnage of Notes dated September 27 and October 8, 1962, between the United States and Trinidad and Tobago makes "Bermuda I" applicable between the two countries.

[7] Any interested persons having objections to the issuance of an order making final the board's tentative findings and conclusions, and issuing the attached permit, shall be allowed 21 days in which to respond from the date of service of this order.

meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of the Board's Regulations; [8] and

6. Except to the extent granted, the applications of British West Indian Airways Limited in Dockets 13962, 23229, and 33183 are denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions stated here, and (2) issue an amended foreign air carrier permit to British West Indian Airways Limited in the specimen form attached, subject to the disapproval by the President;

2. Any interested person having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached specimen permit shall, no later than January 16, 1979, file with the Board and serve on the persons named in paragraph 5 below, 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 concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary 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. Any interested person who wishes to answer these objections shall file such answers no later than January 26, 1979;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action: *Provided*, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order, if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing; [9]

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 (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We are serving this order upon British West Indian Airways Limited, the Ambassador of Trinidad and Tobago in Washington, D.C., and the U.S. Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and transmit a copy to the President of the United States.

By the Civil Aeronautics Board: [10]

PHYLLIS T. KAYLOR,
Secretary.

[SPECIMEN PERMIT]

United States of America Civil Aeronautics Board, Washington, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

British West Indian Airways Limited

is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations of the Board, to engage in foreign air transportation of persons, property, and mail, as follows:

1. Between the coterminal points Trinidad and Tobago; Jamaica; the Cayman Islands; and Belize; the intermediate points Barbados; Grenada; St. Lucia; Antigua; St. Kitts; St. Thomas, Virgin Islands; San Juan, Puerto Rico; Santo Domingo, Dominican Republic; Port-au-Prince, Haiti; Jamaica; Cuba; Nassau, Bahamas; and Bermuda; and the terminal point Miami, Florida;

2. Between the terminal point Barbados, and the terminal point New York, New York;

3. Between the terminal point London, England; the intermediate points Shannon, Eire; Iceland; the Azores; Bermuda; Gander and Montreal, Canada; and the terminal point New York, New York; and beyond New York to the terminal point Jamaica;

4. Between the terminal point Antigua, and the terminal point New York, New York;

5. Between the terminal point Trinidad and Tobago, and the terminal point New York, New York; and

6. Between the terminal point St. Lucia, and the terminal point New York, New York.

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.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Trinidad and Tobago for international air service.

The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

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 Trinidad and Tobago shall be parties.

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 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 and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in Agreement CAB 18900, 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 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.

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 by the holder under this permit.

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 be prescribed by the Board.

This permit shall be effective on----------. British West Indian Airways Limited's authority to serve Routes 4, 5 and 6 as described elsewhere in this permit, shall continue in effect for a period of five years. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designat-

[8] Our tentative findings are based upon the fact that amendment of BWIA's permit will not result in a significant increase in civil aviation operations at U.S. points, nor will it result in the annual consumption of more than 10 million gallons of fuel. We note in particular that BWIA has been providing nonstop service over the New York-Trinidad and Tobago route since 1974; and that we are merely renewing BWIA's Antigua-New York authority, which it has operated since the early 1960's, and removing the one-stop requirement on its New York-St. Lucia route.

[9] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[10] All Members concurred.

ed by the Government of Trinidad and Tobago (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Trinidad and Tobago in lieu of the holder, or (3) upon the termination or expiration of the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland effective February 11, 1946 (Bermuda I) to the extent that Agreement remains in effect pursuant to an Exchange of Notes dated September 27 and October 9, 1962, between the Government of the United States of America and the Government of Trinidad and Tobago. *However*, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and Trinidad and Tobago are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on———.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36350 Filed 12-28-78; 8:45 am]

[6325-01-M]

CIVIL SERVICE COMMISSION

ALLOWANCES AND DIFFERENTIALS—NONFOREIGN AREAS

Public Comments on Compensation for Certain Federal Civilian Employees in the Nonforeign Areas

AGENCY: Civil Service Commission.

ACTION: Solicitation of comments on compensation programs as they affect certain Federal civilian employees in Alaska, Hawaii and U.S. territories and possessions (nonforeign areas).

SUMMARY: Section 5941 of title 5, United States Code, authorizes the payment of a cost of living allowance (COLA) and post differential to Federal civilian employees whose rates of pay are set by statute and who work in Alaska, Hawaii, the Commonwealth of Puerto Rico, or U.S. territories and possessions (hereafter referred to as the nonforeign areas or COLA areas). In Executive Order 12070 and in a Memorandum to the Chairman of the Commission, the President directed the Commission to conduct a study of problems associated with the implementation of 5 U.S.C. 5941, and to evaluate the practice of paying additional compensation based on living costs and environmental factors in relationship to other compensation programs and benefits. As part of that study, the Commission invites interested parties to submit their comments on pertinent issues.

DATE: Comments by February 12, 1979.

ADDRESS: Comments to Office of Allowances and Special Rates, Pay Policy Division, U.S. Civil Service Commission, Room 3353, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Richard J. Carney, Office of Allowances and Special Rates, Pay Policy Division, U.S. Civil Service Commission, Room 3353, 1900 E Street N.W., Washington, D.C. 20415, 202-632-8742.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND—THE FEDERAL COMPENSATION SYSTEM AND THE NONFOREIGN AREAS

Since 1962, basic pay rates for most Federal white-collar employees have been based on the principle of pay comparability with private industry employees. Federal rates are adjusted annually based on the findings of a comprehensive survey of salaries paid by private employers in the 48 contiguous United States. The resulting basic rates of pay, however, apply to all employees in the United States and its territories and possessions who are under a statutory pay system, such as the General Schedule which covers the majority of white-collar employees.

Only the actual rates being paid to employees on each employer's payroll are used in adjusting Federal pay rates. This means that other economic and non-economic factors, such as location, climate, or local living costs, are not considered in establishing Federal basic rates of pay. To the extent that local living costs, environmental conditions or other factors influence pay decisions, they are implicitly reflected in the pay rates established by the private employers. Thus, when private industry rates are used in fixing Federal pay, the resulting Federal rates also implicitly include the same factors considered by industry.

Other programs provide for additional compensation, on top of basic pay, under certain conditions. These include, for example, overtime pay for work in excess of the established workweek or workday; and premium pay for night work and for regular duty on Sunday. Provisions are also made for extra compensation for hazardous duty and for commuting to remote posts of duty. Flexibility is available to increase basic pay rates, i.e., setting special salary rates when significant staffing problems exist because of higher non-Federal pay for comparable levels of work. These compensation programs apply generally in all locations including the nonforeign areas.

A statute enacted in 1948 provides for additional compensation for white-collar employees, including U.S. Postal Service employees, in nonforeign areas based on two factors:

1. The extent to which the local cost of living substantially exceeds living costs in Washington, D.C., or

2. Conditions of environment (climate extremes, remote locations, limited services/facilities, etc.) that differ substantially from those in the mainland United States.

To accommodate the first factor, a cost of living allowance (COLA) is established where warranted based on a comprehensive annual survey of living costs in each allowance area and in Washington, D.C. For factor two, a post differential is paid where warranted based on a survey of environmental conditions at the post of duty. Under the statute the additional compensation may not exceed 25 percent of an employee's basic rate of pay for either program separately or in combination.

This statute was enacted to help Federal agencies staff positions in geographic areas outside the then 48 States. Basically, at the time of enactment local labor markets in the nonforeign areas were often not able to provide adequate numbers of qualified persons to meet Federal staffing needs. Accordingly, it was necessary to recruit from outside those areas, primarily from the mainland United States. Recruiting was difficult because of factors such as isolation from the U.S., relocation expenses, high living costs, remoteness of some posts, and generally difficult environmental and living conditions at many posts. The statute, therefore, provided authority to offer additional compensation which served as a recruiting incentive.

II. ADDITIONAL COMPENSATION BASED ON LIVING COSTS

In determining whether an allowance is warranted and, if so, the amount of the allowance rate, annual comprehensive surveys are conducted in each allowance area and in Washington, D.C. An allowance rate is based on the difference in the cost of living for each allowance area compared to Washington, D.C. The allowance rate is affected by price level fluctuations both in the allowance area and in Washington, D.C. Thus, if prices and costs increase at a faster rate in Washington, D.C., than in an allowance area, the living cost difference decreases and the allowance rate is reduced accordingly. Conversely, if prices and costs increase at a faster rate in the allowance area, the living

cost difference increases and the allowance rate is increased.

Allowance rates are adjusted in 2½ percentage point increments, so minor variations in the place to place living cost indexes from year to year will not necessarily result in a change in an allowance rate. The minimum rate paid is five percent and this must be based on a comparative index of at least 105. The allowance is paid as a percentage of an employee's basic rate of pay and is Federal tax free; however, it may be taxed by local governments.

The index computation method involves collecting prices and costs on about 160 items of consumer goods and services divided into 14 major expenditure categories. Price data are obtained from those retail outlets used most frequently by Federal employees. These include, for example, food stores, clothing outlets, drug stores, and auto insurance companies. Where available, prices are also obtained from military commissary and exchange facilities. In total about 700 prices are collected in each survey. The 14 expenditure categories are as follows:

Meats, Eggs, Fats	Medical and Dental Care
Groceries	Recreation
Fruits and Vegetables	Transportation
Tobacco and Alcohol	Domestic Service
Personal Care	Food Away from Home
Household Operations	Auto Purchase
Clothing	Housing

Within most expenditure categories a number of consumer items have been selected for pricing to represent all items that may be consumed within that category. In the meat group, for example, 17 different cuts are specified, while 12 fresh vegetables are priced in addition to canned and frozen items. Only new automobiles are priced but several makes are included where available. Housing cost data are collected directly from a sample of Federal employees in each allowance area and in Washington, D.C.

The total comparative cost index is a weighted average of the 14 expenditure categories, each of which in turn is a weighted index of the included survey items. The weights are derived from the relative proportion of typical Washington, D.C., family consumer budget expenditures for that item and expenditure category. The weights currently in use were updated in 1972. The same weights, expenditure categories, items surveyed and computational techniques are used in all allowance areas.

Where provided as a condition of Federal civilian employment, Federal housing, commissary, exchange or other special purchasing privileges are considered in fixing the allowance rates for employees with such privileges.

At the present time, the basic allowance rates [1] and the number of employees covered by the allowance program are as follows:

Geographic location	Basic allowance rate [1]	Number of employees
ALASKA:		
Anchorage	25%	5,000
Fairbanks	25%	950
Juneau	25%	750
Rest of State	25%	2,400
HAWAII:		
Oahu	15%	14,500
Hawaii	15%	350
Molokai	15%	20
Maui and Lanai	12.5%	200
Kauai	17.5%	270
GUAM	10%	1,700
PUERTO RICO:		
San Juan Area	10%	5,100
Outside San Juan Area	5%	2,000
VIRGIN ISLANDS:		
St. Thomas and St. John	7.5%	160
St. Croix	5%	150

III. Additional Compensation Based on Conditions of Environment

The 1948 statute provides for additional compensation up to 25 percent of base pay when environmental conditions at a nonforeign post warrant extra pay as a recruiting incentive. Environmental factors that are considered in setting this compensation (called a post differential) include climate extremes, remoteness, availability of consumer goods and services, recreational activities, quality of housing, medical and dental facilities, sanitation conditions, and related factors. The basic comparison of environmental conditions is with the mainland United States, generally metropolitan areas, because the majority of the Federal work force is located in those areas.

Since 1948, a post differential has been authorized for all the Pacific Ocean islands under U.S. jurisdiction except the State of Hawaii. These locations include American Samoa, Guam, Wake Island, Midway Island, and Johnston Island. The maximum 25 percent is paid on all the islands except Guam, where the rate was reduced to 20 percent several years ago.

A differential has not been authorized for any location within Alaska, even though many locations could qualify. The reason for this is that the statute places a limit of 25 percent on combined COLA and post differential payments at any post of duty, and the maximum 25 percent has already been authorized for COLA.

The differential is paid only to employees hired off-island, because it is specifically designed as an incentive to induce needed categories of employees, who would not otherwise be interested, to relocate to the differential area. Under the statute it would not be appropriate to make such payments to individuals already in the area for other reasons, even though the environmental/hardship conditions which exist at a post generally affect all Federal employees as well as other residents of the area. Once eligible, an employee continues to receive the differential as long as he or she remains at the post of duty. On Guam, 300 to 400 employees are eligible for the differential, while in all other locations combined fewer than 200 employees are eligible.

Labor market conditions on Guam have changed significantly over the years. With the exception of some specialized professional and technical occupations, the local labor market has generally been able to satisfy staffing needs.

IV. Federal Compensation Relative to Non-Federal Compensation in the Nonforeign Areas

As part of the review of the statute, the Commission will be exploring other options in an effort to assure the development of a rational compensation plan for the nonforeign areas. This includes, but is not limited to, alternative approaches to providing additional compensation rather than basing the extra pay solely on cost of living or environmental factors. Any compensation plan, regardless of its features, must assure that the Government can attract and retain a staff of well qualified employees while at the same time be fair to employees and the taxpayers.

This part of the study will examine how the Federal employee's compensation, i.e., base pay plus COLA where paid, compares with the compensation of non-Federal employees in the nonforeign areas. The table below shows how Federal pay, with and without the additional pay provided under the COLA program, compares with non-Federal pay in some nonforeign areas.

It should be noted that the pay data shown on the table are based on the results of a limited survey of a number of occupations that are numerically significant in terms of Federal employment in the nonforeign areas shown. Time constraints did not permit conducting more comprehensive surveys in each location. For this reason, adequate data could not be obtained for the Virgin Islands or for those grade level equivalents for which data are not shown. Nevertheless, while there are some limitations in the data, the table does provide a reasonable indicator of the relative levels of non-Federal pay compared to Federal pay.

[1] The basic allowance rate covers 90 percent or more of all eligible employees in each allowance area.

Federal data shown reflect the rates in effect for the same relative time periods and do not include the October 1978 general pay increase or any adjustments in COLA rates that may have occurred at a later date.

The rates for Anchorage, Alaska include data obtained from the bureau of Labor Statistics *Area Wage Survey, Alaska, July 1978;* a spring of 1978 survey of clerical rates conducted by a private firm which includes responses from 27 firms; and an August 1978 CSC survey of 50 private firms covering positions primarily in the middle and upper grade level, and State government rates.

For Honolulu, Hawaii, the pay rates were obtained during an August 1978 CSC survey of 62 private industry firms and the State government.

For Puerto Rico, rates were obtained from the Bureau of Labor Statistics *Area Wage Survey, Puerto Rico, December 1977.* And for Guam, from the Bureau of Labor Statistics *Area Wage Survey, Guam, December 1977.*

FEDERAL/NON-FEDERAL PAY COMPARISONS - NONFOREIGN AREAS

	ANCHORAGE				HONOLULU				PUERTO RICO			GUAM		
	NON-FEDERAL		FEDERAL		NON-FEDERAL		FEDERAL			FEDERAL			FEDERAL	
	Private	State	Basic	w/COLA	Private	State	Basic	w/COLA	Private	Basic	w/COLA	Private	Basic	w/COLA
GS-1	$10,044	-	-	-	-	-	-	-	-	-	-	-	-	-
GS-2	11,635	-	$ 7,539	$ 9,424	$ 8,175	$ 7,552	$ 7,153	$ 8,405	$ 6,661	$ 7,209	$ 7,968	$ 7,580	$ 7,401	$ 8,141
GS-3	13,835	$13,241	8,323	10,404	11,157	9,371	8,868	10,419	7,490	8,303	9,126	8,041	8,414	9,256
GS-4	15,652	14,303	10,227	12,784	11,455	10,450	10,672	12,540	7,861	9,530	10,631	9,000	10,025	11,028
GS-5	19,255	18,612	10,649	13,311	13,946	12,967	12,242	14,384	8,733	11,345	12,550	9,112	11,020	12,122
GS-7	21,212	18,324	13,778	17,222	17,621	13,867	14,845	17,743	9,422	14,707	16,545	-	-	-
GS-9	24,272	23,524	16,605	20,756	17,352	13,850	17,217	20,230	-	-	-	-	-	-
GS-11	29,754	28,728	20,116	25,145	23,495	18,292	21,223	24,937	11,856	21,668	24,376	12,376	20,862	22,948
GS-12	43,121	32,078	25,002	31,252	26,395	23,876	25,974	30,519	12,147	25,273	28,432	14,497	25,200	27,720
GS-13	-	38,994	30,000	37,500	27,940	28,715	30,941	36,356	-	-	-	-	-	-
GS-14	-	47,522	34,688	43,360	36,960	32,567	36,106	42,425	-	-	-	-	-	-
GS-15	-	-	-	-	-	34,614	42,840	50,337	-	-	-	-	-	-

As the table shows, basic Federal pay rates compare very favorably with private rates in Puerto Rico and Guam; with COLA added, Federal compensation is significantly higher. In Honolulu, basic Federal rates lag behind private pay up to about the GS-9 level, while above that level the basic rates are higher than private rates. At all levels, basic rates compare favorably with Hawaii State Government pay. When COLA is added, Federal compensation generally exceeds private pay at the lower grades and is significantly higher at the upper grade levels. For Anchorage, basic Federal pay is substantially below private as well as State pay, and even with COLA added Federal compensation is lower.

V. Questions/Issues for Consideration and Comment

The questions/issues outlined in this section are intended to stimulate discussion and comment and are not intended to be all inclusive. Comments are encouraged on these and any other aspects of the statute and its administration as well as on the concept of providing additional compensation based on living costs or environmental conditions.

A. Administration of Cost of Living Allowance Program

1. Should the geographic coverage of allowance rates be on the broadest possible basis, e.g., survey each island within the State of Hawaii and set a state-wide rate based on the average costs in all locations? Or, should the coverage of the rates be relatively narrow so as to reflect the living costs experienced by employees in a discrete economic community, e.g., Maui Island, Fairbanks area, Ponce area?

2. Military commissary and exchange facilities are available to Federal civilian employees in certain locations and under certain conditions. Prices and costs in these facilities typically are lower than prices and costs in local private retail outlets and, thus, influence living costs. Access to these special facilities may be related to present civilian employment, to prior military service or to the status of an employee's spouse. Federal housing units, both civilian and military, are also available to certain employees and the rental fees may be lower than the cost of comparable private units. To what extent should the prices and costs charged in these special Government facilities be considered in setting the cost of living allowance for employees who have access to them? Should distinctions be made as to the reasons for the access? Should finer distinctions in category be made for affected groups?

3. The statute places a limitation on the amount of COLA or post differential that may be paid. The limit is 25 percent of an employee's basic rate of pay for the cost of living allowance, for the post differential, or for both combined. Should there be a maximum limitation on payments under either program and/or on combined payments? If so, what should it be?

4. Cost of living allowance rates are paid as a percentage of an employee's basic rate of pay even though some expenditures from base pay are unaffected by inter-area living cost differences. Such expenditures include retirement contributions, health and life insurance premiums, Federal income tax, savings, gifts and contributions. Depending on income level and family status, such expenditures may range from 20 percent of income at lower income levels to 50 percent at higher income levels. Should allowance payments be related only to that portion of income that is affected by inter-area living cost differences? (This is commonly referred to as "spendable income.") Or should payments continue to be related to 100 percent of base pay? Should marital status and number of dependents be a factor in allowance rate payments?

5. The cost of living allowance program methodology is oriented toward consumption budget expenditures of a family unit. If there are two members of a family in the same household working in Federal civilian positions covered by the COLA program, both family members presently receive the same percentage allowance rate of their individual basic rates of pay. Should adjustments be made in allowance rate payments when two (or more) members of the same household are eligible for COLA? If so, how should the adjustments be made?

6. Housing costs data used in the computation process are collected directly from a sample of Federal civilian employees in each allowance area and in Washington, D.C. This sample covers all grade (income) levels and is restricted to married male employees because of the program orientation toward family budget expenditures. Excluded under this approach are data from single employees, both male and female, and unmarried heads of households, both male and female. Should the sample be structured so as to collect data from all employees regardless of marital or personal status? Should housing cost data be obtained by some other method? If so, what approach would you suggest? Should average living costs be calculated for families and households of all sizes?

7. Washington, D.C., is specified in the statute as the base mainland U.S. city to be used in making the living cost comparisons with each allowance area. Should the statute be changed to provide a different base for the comparison? What other changes would you suggest be made in the statute?

B. Federal Compensation Concepts and Principles in the Nonforeign Areas

1. As the comparative pay table shown above illustrates, total Federal compensation, i.e., base pay plus COLA, is higher than non-Federal pay in all locations except Alaska. Regular Federal base rates are somewhat lower than private pay in Hawaii at the lower grade levels; however, this is also true of some locations in th mainland U.S. because the regular rates are based on nationwide average private pay. Should only the nationwide regular pay rates apply to the nonforeign areas, rather than a combination of regular rates plus additional compensation based on living costs? Should Federal basic pay rates in the nonforeign areas be based on local non-Federal pay in each area? Should distinctions be made between lower grade levels and upper grade levels, e.g., local pay for lower grades and nationwide rates for upper grades?

2. Since available data show that non-Federal pay in Alaska is substantially higher than Federal pay, with or without COLA, as well as higher than the pay rates in the 48 contiguous United States, what should be the basis for fixing Federal pay in that State? Should pay distinctions be made between duty posts in the three principal cities (Anchorage, Fairbanks, and Juneau) and the outlying ("bush") areas? What should be the basis for the distinctions, e.g., staffing difficulty only, environmental factors only?

3. To what extent should local living costs be considered in setting Federal pay in the nonforeign areas? What should be the basis for including living costs in determining Federal pay? For example, when local costs exceed some norm, either national or regional; when staffing problems develop; to the extent that a combination of base pay plus COLA does not exceed local non-Federal pay?

4. In consideration of the fact that it is necessary to staff duty posts having widely varying environmental/living conditions, what type of compensation flexibility should be available to provide additional pay to help staff those duty posts? What should be the basis for use of the flexibility, e.g., staffing needs only, or environmental conditions regardless of staffing factors?

United States Civil Service Commission.
James C. Spry,
Executive Assistant to the Commissioners.

[FR Doc. 78-35956 Filed 12-28-78; 8:45 am]

[6325-01-M]

PRIVACY ACT OF 1974

Proposed New System of Records

AGENCY: U.S. Civil Service Commission.

ACTION: Proposed new system of records.

SUMMARY: The purpose of this document is to give notice pursuant to 5 U.S.C. 552a(e)(4), of the Civil Service Commission's intent to establish for the Office of Personnel Management a new system of records (OPM/GOVT-4-Ethics in Government Financial Disclosure Records) implementing provisions of the Ethics in Government Act of 1978, Pub. L. 95-521.

DATE: Any interested party may submit written comments regarding the proposal. To be considered, comments must be received on or before January 29, 1979.

ADDRESS: Address comments to the Office of the General Counsel, U.S. Civil Service Commission (Room 5H22), 1900 E Street NW., Washington, D.C. 20415. Comments received will be available for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Joyce L. Evans, Office of the General Counsel (202) 632-5506, and David Reich, Office of the General Counsel (202) 632-5421.

SUPPLEMENTARY INFORMATION: The Ethics in Government Act of 1978, Pub. L. 95-521, dated October 26, 1978, created the Office of Government Ethics (OGE) in the Office of Personnel Management (OPM). This Act is designed to preserve and promote the integrity of public officials and institutions and requires covered individuals to file reports with the Director, OGE, the Federal Election Commission, designated agency ethics officers, and in the case of uniformed personnel with the "Secretary concerned." The Director, OGE, is responsible for: ensuring compliance with the Act by covered individuals of the Executive branch; suggesting procedures designed to ensure successful achievement of the purposes of the Act; and, along with the Attorney General, conducting investigations into possible violations of conflict-of-interest laws.

The expanded character of the data reported to the Director, OGE, and designated agency ethics officers, the larger number of individuals covered by this Act, and the public nature of the information furnished eliminates any possibility for maintenance of these records in an existing system of records. Further, the designation of the Director, OGE, as system manager for these records, the assurance of full public awareness of the existence of and purposes for maintaining this system of records, and the minimizing of agency action by relieving them of the need to create new or modify existing systems of records are goals that are met by establishing this new Government-wide system of records. The System will cover those records maintained as a result of this Act in the Director's office, the Federal Election Commission, the "Secretary concerned," or by agency designated ethics officers, for all covered individuals in the Executive branch.

Reports describing the new system are being filed, concurrent with this publication, with the Speaker of the House, the President of the Senate, and the Office of Management and Budget. The Commission has requested a waiver of the Office of Management and Budget 60-day advance notice requirement, since to delay implementation of this mandated program would adversely affect the public interest in assuring the access of the program, and impede compliance with the law by those officials required to file financial statements before the 60-day notice period expires. This system will become effective the date that OMB grants the waiver. the complete text of the proposed new system appears below.

United States Civil Service Commission.
James C. Spry,
Executive Assistant to the Commissioners.

OPM/GOVT-4

System name:

Ethics in Government Financial Disclosure Records

System location:

Director, Office of Government Ethics, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and agency designated ethics offices.

Categories of individuals covered by the system:

This system contains records on: The President, Vice President and candidates for those offices; Executive branch officers and employees, including special government employees, whose positions are classified at grades GS-16 and above or at an equivalent rate under another pay schedule; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16; Administrative Law Judges; employees in the excepted service in positions which are of a confidential or policy-making nature unless an employee or groups of employees are exempted by the Director of the Office of Government Ethics; each member of a uniformed service whose pay grade is at or in excess of 0-7 under section 201 of title 37, United States Code; the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service, and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; the Director of the Office of Government Ethics and designated agency officials; and nominees for positions requiring confirmation by the Senate or both Houses of Congress. This system includes both former and current employees in these categories.

Categories of records in the system:

This system of records contains financial information such as: income from salaries, honoraria, dividends, rent, interest, trusts and capital gains; interest in property held in a trade or business or for investment or the production of income; income from the sale, exchange or purchase of real property or property such as stocks and bonds; gifts; reimbursements; liabilities in excess of $10,000 owed to any creditor; copies of and documents relating to qualified blind trusts; information on positions held in private organizations and on agreements with private employees; and other documents that may be generated in the course of administering the Act.

Authority for maintenance of the system:

Pub. L. 95-521, Ethics in Government Act of 1978.

Purpose:

These records are maintained to meet the requirements of the Ethics in Government Act of 1978, Pub. L. 95-521 regarding the filing of financial status reports. Such statements and related records are required to assure compliance with the Act and to preserve and promote the integrity of public officials and institutions.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and information in these records may be used:

a. To disclose any and all of the information furnished by the reporting official, in accordance with provisions of section 205 of the Ethics in Government Act of 1978, to any requesting person.

b. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or imple-

menting a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in rare instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Office of the Special Counsel and the Merit Systems Protection Board when requested in performance of their authorized duties.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

These records are maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained.

Safeguards:

These records are located in file cabinets to which only authorized personnel have access.

Retention and disposal:

These records are generally maintained for a period of six years after filing, except when filed by a nominee for an appointment requiring confirmation by the Senate where the nominee is not appointed and Presidential and Vice-Presidential candidates who are not elected. In these cases, the record is destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. Destruction is by shredding or burning.

Systems manager(s) and address(es):

The system managers are:

1. For records filed directly with the Office of Government Ethics, the systems manager is the Director, Office of Government Ethics, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415; and

2. For records filed with designated agency ethics officers or the "Secretary concerned," the systems manager is: Agency Designated Ethics Officer, Headquarters, Department or Agency, Washington, D.C. (ZIP code).

3. For records filed with the Federal Election Commission by candidates for President or Vice President, the systems manager is the Staff Director, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

Notification procedure:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate systems manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name

b. Department or agency and component with which employed or proposed to be employed.

Records access procedures:

Individuals wishing to request access to their records should contact the appropriate systems manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name

b. Department or agency and component with which employed or proposed to be employed.

Individuals requesting access to information not generally available to the public under the Act must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records. (5 CFR 297.201 and 297.203).

Contesting record procedures:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updated the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate systems manager indicated above.

Record source categories:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;

b. Federal officials who review the statements to make conflict-of-interest determinations.

c. Persons alleging conflicts of interest and persons contacted during any investigation of the allegations.

[FR Doc. 78-35974 Filed 12-28-78; 8:45 am]

[6325-01-M]

TRANSFER OF FUNCTION

AGENCY: Civil Service Commission.

ACTION: Notice of transfer of functions.

SUMMARY: Under the President's Reorganization Plans No. 1 and 2 of 1978, designated functions of the Civil Service Commission are transferred to (1) the Equal Employment Opportunity Commission, (2) the Office of Personnel Management, (3) the Office of Special Counsel, and (4) the Federal Labor Relations Authority, effective January 1, 1979. Appellate and other adjudication functions and certain special studies functions will remain with the Civil Service Commission which on January 1, 1979, by redesignation, becomes the Merit Systems Protection Board. Under section 907(a) of title 5, United States Code (Reorganization Act of 1977), all regulations of the Civil Service Commission will remain in effect, except to the extent rescinded, modified, superseded or made inapplicable by the Plans, as regulations of the agencies succeeding to or performing these functions until amended by these agencies. Further, the Civil Service Reform Act provides that all rules and regulations affecting Federal service in effect on January 11, 1979, except as otherwise provided in the Act, shall continue in effect according to their terms, until modified, terminated, superseded, or repealed by the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Moyer, 202-632-5524.

Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-36354 Filed 12-28-78; 8:45 am]

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COMPUTER PERIPHERALS, COMPONENTS AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Tuesday, January 23, 1979, at 9:30 a.m. in Room 5230, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977 and August 28, 1978, tha Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has four parts:

GENERAL SESSION

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Subcommittee reports:

A. Foreign Availability;
B. Memory and Media;
C. Display and Terminals; and
D. Export Regulations.

EXECUTIVE SESSION

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41071).

Dated: December 26, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36342 Filed 12-28-78; 8:45 am]

[3510-25-M]

TECHNOLOGY TRANSFER SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, January 17, 1979, at 1:00 p.m. in Conference Room D, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee was initially established on April 10, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Technology Transfer Subcommittee was formed to examine the impact of transferring Automatic Data Processing technology to Communist destinations.

The Subcommittee meeting agenda has four parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Review of possible future activities for the Subcommittee for 1979.

EXECUTIVE SESSION

(4) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4) the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41072).

Dated: December 26, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36341 Filed 12-28-78; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. Department of the Air Force, AF/Jacp, 1900 Half Street, SW., Washington, D.C. 20324.

Patent application 921,139: High Specific Strength Polycrystalline Titanium-Based Alloys, filed June 30, 1978.

Patent application 922,603: Control Cable Fail Safe Device, filed July 7, 1978.

Patent application 992,604: Magazine for Glass Photographic Plates, filed July 7, 1978.

Patent 4,090,872: Aluminum Base Brazing Alloy, filed December 29, 1976, patented May 23, 1978. Not available NTIS.

Patent 4, 091,453: Low Offset AC Correlator, filed November 10, 1976, patented May 23, 1978. Not available NTIS.

Patent 4,091,460: Quasi Static, Virtually Nonvolatile Random Access Memory Cell, filed October 5, 1976, patented May 23, 1978. Not available NTIS.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent application 816,574: Lanthanum Nickel Aluminum Alloy, filed July 18, 1977.

Patent 4,069,357: Process for Diffusing Metallic Coatings into Ceramics to Improve Their Voltage Withstanding Capabilities, filed November 9, 1976, patented January 17, 1978. Not available NTIS.

Patent 4,069,867: Cyclic Flow Underground Coal Gasification Process, filed December 17, 1976, patented January 24, 1978. Not available NTIS.

Patent 4,073,720: Method for Reclaiming Waste Lubricating Oils, filed October 22, 1976, patented February 14, 1978. Not available NTIS.

U.S. Department of the Navy, Assistant Chief for Pat. Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 321,913: Corner Fed Electric Non-Rectangular Microstrip Dipole Antennas, filed July 3, 1978.

Patent application 895,838: Direction-Finding Array of Crossed Dipoles, filed April 13, 1978.

Patent application 905,902: TV Bandwidth Reduction System Using a Hybrid Discrete Cosine DPCM, filed May 15, 1978.

Patent application 913,624: Angle Servo Preamplifier, filed June 8, 1978.,

Patent application 918,203: Dry Ice, Liquid Pulse Pump Cooling System, filed June 22, 1978.

Patent application 919,195: Corner Fed Electric Rectangular Microstrip Dipole Antenna, filed June 26, 1978.

Patent application 924,024: Rotor Hub for a Helicopter, filed July 12, 1978.

Patent application 924,280: Mode Control Apparatus for a Separable-Insert Coaxial Magnetron, filed July 10, 1978.

Patent 4,055,776: CCD Differential Current Apparatus, filed October 26, 1976, patented October 25, 1977. Not available NTIS.

Patent 4,068,311: Discrete Transform Systems Using Permuter Memories, filed December 3, 1976, patented January 10, 1978. Not available NTIS.

Patent 4,071,012: Fluid Fill or Bleed Apparatus, filed April 23, 1976, patented January 31, 1978. Not available NTIS.

Patent 4,078,509: Salvage Apparatus and Method, filed May 27, 1976, patented March 14, 1978. Not available NTIS.

Patent 4,086,769: Compound Memory Engine, filed May 19, 1975, patented May 2, 1978. Not available NTIS.

Patent 4,087,743: Fog-Water Conductivity Measuring Device, filed July 21, 1976, patented May 2, 1978. Not available NTIS.

Patent 4,088,622: Molded Drag Reduction Coatings, filed June 25, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,088,623: Coatings That Reduce Flow Resistance and Turbulent Drag at Their Interface with Liquids, filed June 28, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,090,193: Frequency Multiplexed Water Leak Detection System, filed November 24, 1976, patented May 16, 1978. Not available NTIS.

[FR Doc. 78-36249 Filed 12-28-78; 8:45 am]

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 31, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: 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 and the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1979, November 15, 1978 (42 FR 53151):

CLASS 7105

WOODEN PICTURE FRAMES

7105-00-297-3398
7105-00-149-1277
7105-00-465-6199
7105-00-052-8696
7105-00-903-1842
7105-00-903-1843
7105-00-985-7356
7105-00-149-1276
7105-00-641-4385
7105-00-297-3397
7105-00-052-8684
7105-00-052-8685
7105-00-052-8687
7105-00-052-8688
7105-00-052-8694
7105-00-149-1280
7105-00-149-1281
7105-00-149-1282

SIC 7349

Janitorial/Custodial Service at:
Bridge of the Americas
Paso Del Norte
Good Neighbor Bridge Border Stations
Cotton Classing Building
El Paso, Texas

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-36252 Filed 12-28-78; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1979

Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from Procurement List 1979 commodities produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 29, 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: On November 3, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 51445) of proposed deletions from Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby deleted from Procurement List 1979:

CLASS 6530

WRAPPERS, STERILIZATION

6530-00-719-0000
6530-00-299-9602
6530-00-719-0030
6530-00-299-9601
6530-00-719-0035
6530-00-299-9600
6530-00-719-0040
6530-00-299-9599
6530-00-719-0045
6530-00-850-8613

CLASS 7510

ERASER, MECHANICAL

7510-00-865-5292
7510-00-082-2665

CLASS 7920

SPONGE, CELLULOSE

7920-00-559-8462
7920-00-559-8463
7920-00-559-8464

E. R. ALLEY, Jr.,
Acting Executive Director.

[FR Doc. 78-36253 Filed 12-28-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

FINANCIAL COMPENSATION OF PARTICIPANTS IN INFORMAL RULEMAKING PROCEEDINGS

Delegation of Authority

AGENCY: Consumer Product Safety Commission.

ACTION: Delegation of authority.

SUMMARY: Under an interim regulation, the Commission will be administering a temporary program of financial compensation for participants in its informal rulemaking proceedings. The Commission has delegated to a special selection committee the authority to decide who will receive such funding. The Commission has retained the authority to decide in which informal proceedings it will solicit applications for funding.

DATES: The delegation of authority became effective on December 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Catherine Bolger, Office of Public Participation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (202) 254-6241.

SUPPLEMENTARY INFORMATION: On May 31, 1978 the Commission issued an interim regulation concerning the financial compensation of participants in the Commission's informal rulemaking proceedings (16 CFR Part 1050, 43 FR 23560-64). This regulation contains the policies and procedures for the Commission's temporary financial compensation program.

Under the regulation the Commission selects certain proceedings in which to solicit applications for funding. The Commission then authorizes funding for certain participants, all of whom must meet the criteria included in the regulation.

The Commission has recently delegated some of its authority over the financial compensation temporary program: A special Financial Compensation Selection Committee—comprised of the General Counsel, the Executive Director, and the Secretary of the Commission—will select the participants and the amount of funding they will be authorized to receive. The Commission has not delegated its authority for selection of proceedings.

The delegation document, fully reprinted below, details the authority delegated to the special selection committee and the authority retained by the Commission. It will remain in effect until the Commission changes it.

DELEGATION OF AUTHORITY FOR FUNDING SELECTED PARTICIPANTS IN INFORMAL RULEMAKING PROCEEDINGS

1. *Purpose.* The purpose of this order is to delegate the Commission's authority to decide which participants in informal rulemaking proceedings will be authorized to receive financial compensation from the Commission.

2. *Scope.* The provisions of this order apply to the Financial Compensation Selection Committee.

3. *References.* Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)).

4. *Delegation of authority.* In an interim regulation (16 CFR Part 1050) the Commission has issued its policies and procedures for providing financial compensation to selected participants in its informal rulemaking proceedings. In this order the Commission is delegating some of the authority it has under that regulation to a Financial Compensation Selection Committee. Unless and until superseded by subsequent order, this authority is delegated as follows:

(a) The General Counsel, the Executive Director, and the Secretary of the Commission will be members of a Financial Compensation Selection Committee ("Committee"). If any or all of these positions are vacant, whoever is filling the position(s) on an acting basis will be a member of the Committee. Whenever a member is unable to function on the Committee, he or she may designate a subordinate to serve temporarily as a member of the Committee.

(b) While serving on the Committee, all members will follow the applicable provisions of the interim regulation and their own judgments. Although the members normally report to the Chairman of the Commission and serve all the Commissioners, they will make all Committee decisions independent of any instructions or recommendations from the chairman or Commissioners.

(c) All actions of the Committee must be supported by at least two members.

(d) The committee will evaluate all applications (including late applications, described in § 1050.6(a)(4), to the extent practicable) for financial compensation in informal rulemaking proceedings and will authorize funding for selected participants who meet the criteria of § 1050.4(b). The Committee will then notify participants whether they have or have not been authorized funding, in accordance with §§ 1050.6(a)(3) and 1050.6(b).

(e) The amounts of funding authorized will be in accordance with § 1050.7 (b), (d), and (e).

5. *Retention of authority.* The Commission retains all of the authority under the interim regulation that is not delegated to the Committee by this order. In particular, the Commission will select those proceedings in which to solicit applications for funding; approve the FEDERAL REGISTER document which notifies the public of those proceedings; and set the deadline for receipt of applications (§ 1050.6(a) (1) and (2)). Further, the Commission specifically retains the authority to establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and to establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding (§ 1050.7(a)). Such limitations must be established before the Committee authorizes any funding in a particular proceeding.

6. *Redelegation.* The authority delegated to the Financial Compensation Selection Committee in this order may not be redelegated.

7. *Effective date.* This delegation shall become effective on December 11, 1978.

SUSAN B. KING,
Chairman.

BARBARA H. FRANKLIN,
Commissioner.

R. DAVID PITTLE,
Commissioner.

Dissenting:

EDITH B. SLOAN,
Commissioner.

Not voting:

SAMUEL ZAGORIA,
Commissioner.

Dated: December, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-36271 Filed 12-28-78; 8:45 am]

[3810-71-M]

DEPARTMENT OF DEFENSE

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE, COMMAND, CONTROL AND COMMUNICATIONS SUB-PANEL

Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Command, Control and Communications Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on January 17-18, 1979, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on both days. All sessions of the meeting will be closed to the public.

The entire agenda will be devoted to discussions of United States and Soviet weapons, sensors, and concepts of operations, and related intelligence. The agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b (c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander Robert B. Vosilus, USN, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, VA 22029, telephone number (202) 694-3191.

Dated: December 21, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-36254 Filed 12-28-78; 8:45 am]

[3810-71-M]

SECRETARY OF THE NAVY'S ADVISORY BOARD ON EDUCATION AND TRAINING (SABET)

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C., App. I), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training (SABET), will meet on January 31—February 1, 1979, at the headquarters

of the Chief of Naval Education and Training, Pensacola, Florida. Sessions of the meeting will commence at 8:30 a.m. each day and terminate at 5:00 p.m. on January 31, and terminate at 12:00 noon on February 1, 1979.

The Board will receive an update on a number of programs of continuing interest to the Board, including the SABET Subcommittee report on professional military education, the development of executive level management skills, and an overview of civilian personnel reorganization. In addition, the Board will receive a Job Oriented Basic Skills (JOBS) Training Brief. The Board will then consider and discuss SABET's involvement in order to provide recommendations to the Secretary of the Navy.

for further information concerning this meeting, contact: Dr. M. Frances Kelly, Assistant Branch head, professional Education (OP-130T), 800 North Quincy Street, Arlington, VA 22203, telephone number: (202) 694-5643.

Dated: December 21, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-36255 Filed 12-28-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

FUEL OIL MARKETING ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fuel Oil Marketing Advisory Committee and Ad Hoc Subcommittee will meet Monday, January 22, 1979, and Tuesday, January 23, 1979, in the Executive Tower, 1405 Curtis Street, Denver, Colorado.

The Committee was established to provide the Secretary of Energy with expert and technical advice concerning the marketing of fuel oil as it relates to the development and implementation of policies and programs by the Department of Energy.

The tentative agenda for the meetings is as follows:

MONDAY, JANUARY 22, 1979

Ad Hoc Subcommittee—Tower Room—9:00 a.m. to 1:00 p.m. Consideration of programs to alleviate higher costs of energy for low-income persons.

TUESDAY, JANUARY 23, 1979

Full Committee—Gold Room—9:00 a.m. to 5:00 p.m.

- Old Business
- Advisory Committee Guidelines
- Report of the Ad Hoc Subcommittee
- Report Regarding SBA Assistance
- Report from Natural Gas Committee
- Residual Fuel Oil Marketers Committee Report
- New Business
- Remarks from Floor (10 minute rule)

The meetings are open to the public. The Chairperson of the Committee is empowered to conduct the meetings in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office (202) 252-5187, at least 5 days prior to the meetings and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C. on December 26, 1978.

TINA C. HOBSON,
Director, Office of Consumer Affairs.

[FR Doc. 78-36333 Filed 12-28-78; 8:45 am]

[6450-01-M]

[ERA Docket Nos. 56516-6081-01, -02]

Stony Brook Phase I Project; Massachusetts Municipal Wholesale Electric Co.

Petition and Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of petition and public hearing.

SUMMARY: On November 27, 1978, the Massachusetts Municipal Wholesale Electric Company (MMWEC) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a determination, to be made prior to December 15, 1978, (1) whether or not MMWEC's Stony Brook Phase I Project powerplants are "new" or "existing" within the meaning of Section 103(a) of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (FUA) and (2) if determined by the ERA to be "new", whether pursuant to Section 902 of FUA, such powerplants qualify for any exemptions from the prohibitions of Title II of FUA applicable to new facilities. The ERA has issued a Tentative Decision and Order in this matter, granting in part and denying in part, MMWEC's petition. The purpose of this Notice is to invite interested persons to submit written comments on this matter prior to the issuance of a Final Decision and Order by ERA. In accordance with the requirements of Section 701 of FUA, any interested party, including the DOE, may request that a public hearing be held on this matter.

DATES: Written comments and/or requests for a public hearing are due on or before February 21, 1979.

ADDRESS: Requests for a public hearing and/or 10 copies of written comments shall be submitted to: Office of Public Hearing Management, ERA Docket Nos. 56516-6081-01, -02, Department of Energy, 2000 M Street, NW., Room 2313, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

Barton House (Fuels Regulation Program Office), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 6010, Washington, D.C. 20461, Phone: (202) 254-3905.

James H. Heffernan (Office of the General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 6144, Washington, D.C. 20461, Phone: (202) 633-9296.

SUPPLEMENTARY INFORMATION: MMWEC is a subdivision of the Commonwealth of Massachusetts formed in 1975 to serve as an agent for participating municipal electric utility systems for the development of a municipal power supply program. The Massachusetts Legislature has authorized MMWEC to issue tax exempt revenue bonds and to participate in the New England Power Pool.

MMWEC plans to build five powerplants on 471 acres of land adjacent to the Westover Air Force Base, in Ludlow, Massachusetts, to be designated as the Stony Brook Energy Center, to supply the peak and intermediate load power needs of 31 municipal electric departments and systems. The powerplants which constitute MMWEC's Phase I Project are to have a total rated generating capacity of approximately 511 MW. The Phase I Project will consist of two oil-fired

simple-cycle combustion turbine peaking units (together equalling 170 MW) and a combined-cycle intermediate unit composed of three oil-fired combustion turbines which will exhaust into three heat recovery steam generators and one steam turbine (together yielding 341 MW net). These units are scheduled to be operated on No. 2 home heating oil and to start commercial operation in 1981. Approximately 4.7 miles of 345-KV transmission line will be installed to connect the Stony Brook Energy Center to the New England Power Pool transmission system.

On November 27, 1978, pursuant to Section 902(a) of FUA, MMWEC requested the ERA to determine, prior to December 15, 1978, (1) whether MMWEC's Phase I Project powerplants are "new" or "existing" within the meaning of Section 103(a) of FUA, and (2) if determined to be "new" whether these powerplants qualify for any exemption under Title II of FUA.

In accordance with MMWEC's request for an expedited determination, ERA issued a Tentative Decision and Order pursuant to Sections 902 and 103 of FUA on December 14, 1978. ERA's action at that time was described as "tentative" to permit full compliance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* This Tentative Decision and Order may be amended or revised pending completion of the NEPA requirements and the administrative process under Section 701 of FUA.

In the Tentative Decision and Order, ERA determined that MMWEC's Phase I Project powerplants must be classified as "new" facilities under the criteria set forth in Section 103(a) of FUA as implemented by the Interim Rule governing "transitional facilities" published at 43 FR 54912, and that the powerplants are therefore subject to the prohibitions of Section 201 of FUA. ERA also decided that the evidence presented by MMWEC did not warrant a determination that the intermediate load unit planned for the Phase I Project qualifies for any exemption under Title II of FUA. ERA's Tentative Decision and Order denied MMWEC's request for an exemption for this unit without prejudice to future petitions for exemption. Subject to compliance with certain terms and conditions enumerated in the Tentative Decision and Order, and pursuant to Section 902 of FUA, ERA granted MMWEC's two Phase I Project simple-cycle peaking units an exemption under the provisions of Section 212(g) from the prohibitions of Section 201 of FUA, upon certification by officials of MMWEC that neither of the two units will be operated in excess of 1500 hours annually.

ERA hereby invites MMWEC, the people of the Commonwealth of Massachusetts and all other interested parties, in accordance with the requirements of Section 701, to submit written comments on this matter. Pending the completion of the environmental review under the National Environmental Policy Act of 1969, as required by FUA, and prior to the issuance of a Final Decision and Order by ERA, interested parties, including the DOE, May also request a public hearing or an informal conference with the ERA on this matter. A notice of a public hearing, if requested, will be published in the FEDERAL REGISTER.

In accordance with the provisions of Section 701, copies of MMWEC's petition has been transmitted to the Environmental Protection Agency and to the Federal Trade Commission for the purpose of affording those agencies an opportunity for comment and notices have been provided to the appropriate state agencies.

The public file, containing MMWEC's petition materials and ERA's Tentative Decision and Order is available for inspection upon request at the following locations and at the following times:

ERA
Room 7202
2000 M Street, N.W.
Washington, D.C. 20461
Monday-Friday
8:00 a.m.-4:30 p.m.

DOE Regional Office
150 Causeway Street
Boston, Massachusetts 02114

Issued in Washington, D.C. on December 26, 1978.

DORIS J. DEWTON,
Acting Assistant Administrator for Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-36331 Filed 12-28-78; 8:45 am]

[6450-01-M]

Office of Energy Technology

FOSSIL ENERGY ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fossil Energy Advisory Committee will meet Thursday, January 18, 1979, at 9:00 a.m., in the Commonwealth Ballroom at the Marriott Twin Bridges Hotel, Route 1 and Interstate I-95, Arlington, Virginia.

The purpose of the committee is to provide the Department of Energy with advice in developing through research, new and more efficient methods of mining, preparing and utilizing coal.

The following topics will be discussed: Direct Combustion of Coal, Flue Gas Cleanup, Fluidized Bed Combustion, Economic Comparisons, and Environmental Regulations. Copies of the agenda will be available at the meeting.

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office (202) 252-5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C. on December 26, 1978.

TINA C. HOBSON,
Director, Office of Consumer Affairs.

[FR Doc. 78-36332 Filed 12-28-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. CP79-97]

COLUMBIA GULF TRANSMISSION CO. AND COLUMBIA GAS TRANSMISSION CORP.

Application

DECEMBER 21, 1978.

Take notice that on December 1, 1978, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP79-97 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas produced offshore Louisiana with Gulf Oil Corporation (Gulf), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that Gulf has gas available in Blocks 313, 314, and 331, Eugene Island Area, offshore Louisiana, where Columbia Gulf has facilities through which it can accept deliveries for the account of Columbia Gas. Columbia Gas is said to have available gas in Block 497, West Cameron Area, offshore Louisiana, which can be delivered for Gulf's account to Texas Eastern Transmission Corporation (Texas Eastern) in East Cameron Area, offshore Louisiana, or other mutually agreeable point.

The application states that Columbia Gulf would construct facilities from Block 479 West Cameron Area, to Block 480, West Cameron Area, pursuant to budget-type authorization and would deliver Columbia Gas's Block 479 gas to Texas Eastern, Transcontinental Gas Pipe Line Corporation, and Northern Natural Gas Company which would transport the gas for Columbia Gas through existing facilities for delivery to Texas Eastern in Block 245, East Cameron Area, for the account of Gulf.

Applicants propose to engage in an exchange of natural gas with Gulf to enable Columbia Gas and Gulf to receive gas from areas where they do not have facilities. Applicants and Gulf would exchange up to 15,000 Mcf gas per day on a thermal basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36310 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket NOs. CS71-702, *et al.*]

FIRST CITY NATIONAL BANK OF HOUSTON, ET AL.

Applications for "Small Producer" Certificates [1]

DECEMBER 21, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the natural Gas Act and Section 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the commission in 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 be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	*Date Filed*	*Applicant*
CS71-702.....	4/10/78 [1]	First City National Bank of Houston and George L. Nye, trustees for Janie C. Lee Trust, 2100 First City National Bank Building, Houston, Tex. 77002.
CS71-828.....	9/14/78 [2]	Estate of Dorothea B. Prentiss (Dorothea B. Prentiss), 730 Lane Building, Shreveport, La. 71101.
CS71-1071...	8/7/78 [3]	Mrs. Gaye Gilster Morgan Lee (the Gaye Anne Gilster Trust under the will of Ralph R. Gilster), P.O. Box 1315, Shreveport, La. 71102.
CS71-1148...	4/10/78 [1]	First City National Bank of Houston and George C. Nye, trustees for the Carrie Gail Stringfellow Trust and the Regan McIntyre Stringfellow Trust, 2100 First City National Bank Building, Houston, Tex. 77002.
CS71-1149...	4/10/78 [1]	First City National Bank of Houston and George L. Nye, trustees for Mark Rogers Trust, 2100 First City National Bank Building, Houston, Tex. 77002.
CS71-1150...	4/10/78 [1]	First City National Bank of Houston and George L. Nye, trustees for Kate Crichton Gubberman, Anne Crichton Clark, Lili Crichton, and John Hayes Grichton, Jr., Trusts, 2100 First City National Bank Building, Houston, Tex. 77002.
CS71-1151...	4/10/78 [1]	First City National Bank of Houston and George L. Nye, trustees for William M. Comegys III, Alfred Glassell Comegys, John Stafford Comegys, and Ripley Scott Comegys Trusts, 2100 First City National Bank Building, Houston, Tex. 77002.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date Filed	Applicant
CS71-1152...	4/10/78 [1]	First City National Bank of Houston and George L. Nye, trustees for Charles Stringfellow III Trust, 2100 First City National Bank Building, Houston, Tex. 77002.
CS72-180.....	12/11/78 [4]	Glen M. Neubert, Agent—d/b/a R & N Associates, 4100 McEwen Road—suite 216, Dallas, Tex. 75234.
CS72-181.....	12/11/78 [4]	Leach Brothers, Inc., 4100 McEwen Road—Suite 216, Dallas, Tex. 75234.
CS74-123.....	5/25/78 [5]	Kern Co. (Anderson Oil & Gas Co., Inc.) 250 Mid America Building, Midland, Tex. 79701.
CS76-391.....	8/1/78 [6]	Bankers Trust Co., Executor of the Estate of Raymond A. Baur (Raymond A. Baur), P.O. Box 3561, Church Street Station, New York, N.Y. 10008.
CS77-299.....	12/15/78	ENERCO Exploration and Management Co.,[7] 418 Market, Suite 730, Shreveport, La. 71101.
CS77-392.....	6/12/78 [8]	Mrs. A. Z. Skeeters & W. C. Curry (A. Z. Skeeters & W. C. Curry), P.O. Box 1528, Longview, Tex. 75601.
CS78-699.....	8/23/78	Norman L. Botkin, P.O. Box 493, Charleston, W. Va. 25322.
CS79-145.....	12/12/78	M. Hunter Puckett, 801 Amarillo Building, Amarillo, Tex. 79101.
CS79-146.....	12/12/78	Hunter Oil Corp., 801 Amarillo Building Amarillo, Tex. 79101.
CS79-147.....	12/13/78	The Shoshone Indian Tribe and the Arapahoe Indian Tribe, both of the Wind River Reservation, Wyo., Fort Washakie, Wyo.
CS79-148.....	12/14/78	Norse Petroleum (U.S.) Inc., 333 Petroleum Building, Denver, Colo. 80202.

[1] Being noticed to reflect change in Trustee

[2] Being noticed to reflect name change due to certificate holder's demise and request to further amend the certificate to include the heirs

[3] Being noticed to reflect submittal of annual report form with implied request to change certificate holder

[4] Being noticed to reflect change of address

[5] Being noticed to reflect name change

[6] Being noticed to reflect submittal of annual report form with implied request for name change due to Raymond A. Baur's demise

[7] Being amended to include the names of ENERCO, Inc. and Energy Resources of Minn., Inc. as affiliates of ENERCO Exploration and Management Co

[8] Being noticed to reflect substitution of Mrs. A. Z. Skeeters for A. Z. Skeeters due to A. Z. Skeeters demise

[FR Doc. 78-36309 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-95]

MICHIGAN WISCONSIN PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on November 30, 1978, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-95 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern) to enable Southern to receive gas produced offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to receive from High Island Offshore System in Block 167, West Cameron Area, offshore Louisiana, up to 20,000 Mcf of natural gas per day for the account of Southern from production in Block 352, West Cameron Area, and to deliver equivalent volumes to Southern at an existing interconnection at Southern's Shadyside compressor station in St. Mary Parish, Louisiana. Applicant would charge monthly $1.55 cents per Mcf times the contract demand of 20,000 Mcf of gas. The instant service is proposed to enable Southern to receive a supply of gas remote from its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36311 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-104]

MIDWESTERN GAS TRANSMISSION CO.

Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, Midwestern Gas Transmission Company (Applicant), P.O. box 2571, Houston, Texas 77001, filed an application in Docket No. CP79-104 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to install and operate certain natural gas compressors and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has filed in Docket No. CP79-22 for authorization to transport natural gas for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. In order to render such service, Applicant states that it must add 3,540 horsepower to three of its existing compressor stations located in Ohio County, Kentucky, Pike County, Indiana, and Edgar County, Illinois, and construct a new compressor station of 9,100 horsepower in Sullivan County, Indiana. The estimated cost for the proposed facilities would be $12,444,000, which would initially come from Applicant's general fund or bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the

proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36312 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-108]

MONTANA-DAKOTA UTILITIES CO.

Application

DECEMBER 21, 1978.

Take notice that on December 9, 1978, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed an application in Docket No. CP79-108 pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Commission's Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing Applicant to construct, during the 12-month period commencing April 1, 1979, and operate gas-purchase facilities to enable Applicant to take into its system national gas which would be purchased from producers or other similar sellers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in 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 cost of the proposed gas-purchase facilities would not exceed $3,250,000, with the cost of no single project to exceed $812,500, which cost Applicant would finance with internally generated funds and/or interim short/term loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on it 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. 78-36313 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-111]

NORTHERN NATURAL GAS CO.

Application

DECEMBER 21, 1978.

Take notice that on December 8, 1978, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed an application in Docket No. CP79-111 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas measuring facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that a gas measuring facility in the village of Pender, Nebraska, is no longer necessary because the sole user of the gas measured by the facility has ceased operations. Consequently, the village of Pender requested Applicant to remove and dismantle the facility. Applicant states that the proposed abandonment would have no effect on its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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. 78-36314 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-98]

PANHANDLE EASTERN PIPE LINE CO. AND TRUNKLINE GAS CO.

Application

DECEMBER 21, 1978.

Take notice that on December 1, 1978 Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), 3000 Bissonnet, Houston, Texas 77001 (Applicants), filed in Docket No. CP79-98 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to transport gas for Mississippi River Transmission Company (MRT), all as more fully set forth in the application on file with the Commission and open to public inspection.

The following numbered paragraphs contain statements related in the application:

(1) MRT and ANR Storage Company (ANR), have entered into a 15-year natural gas storage agreement (storage agreement). The storage agreement provides that during each summer period (April 1 through October 31) MRT would cause to be delivered up to 3,053,000 Mcf of natural gas to ANR for storage, and during each winter period (November 1 through April 30) ANR would make thermally equivalent volumes of gas available for redelivery to MRT.

(2) MRT and Applicants, on October 12, 1978, entered into a 15-year transportation agreement (transportation agreement), commencing in April 1980, to provide part of the transportation service MRT would require to transport its gas to and from ANR's storage fields.

(3) The transportation agreement provides that:

(a) During each summer period Trunkline would reduce its existing deliveries to MRT in Clay County, Illinois, by a daily rate of up to 15,265 Mcf of natural gas, plus 2.5 percent for compressor fuel, not to exceed 3,053,000 Mcf in any one summer period, and deliver such volumes to Panhandle at Tuscola, Illinois;

(b) Panhandle would deliver those volumes to Michigan Wisconsin Pipe Line Corporation (M-W) for the account of MRT at an existing point of interconnection between Panhandle's and M-W's systems in Defiance County, Ohio.

(c) Panhandle would receive from M-W, in each winter period, that daily amount of gas as MRT may request, and Trunkline would make daily deliveries of thermally equivalent volumes to MRT in Clay County, Illinois.

(d) For such transportation service, Applicants would charge a $40,905 monthly fee for each month during the Summer Period, April through October, at a unit rate of 9.15 cents per Mcf. For gas redelivered to MRT during the Winter Period, November through April, MRT would pay to Panhandle a charge of 2.50 cents per Mcf. Panhandle would reimburse Trunkline 2.50 cents per Mcf for gas delivered during the Summer Period and 2.50 cents per Mcf for gas redelivered during the Winter Period through Trunkline's facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36315 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-105]

PANHANDLE EASTERN PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed an application in Docket No. CP77-105 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas for Kokomo Gas and Fuel Company (Kokomo), an existing resale customer of Applicant, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Applicant and Kokomo, on September 15, 1978, entered into an agreement pursuant to which Applicant agreed to transport for Kokomo 500 Mcf of gas per day on a firm basis, and up to 300 Mcf per day on a best efforts basis, from an existing point of interconnection between the pipeline systems of Applicant and Northern Natural Gas Company in Kiowa County, Kansas, to an existing point of interconnection between Applicant's and Kokomo's systems in Tipton, Indiana. The gas subject to the agreement would be purchased from Cabot Corportion in Texas County, Oklahoma.

The agreement's proposed monthly rate for such service would be $3,090, with upward or downward adjustments of 20.33 cents per Mcf if the transported volumes vary from the firm amount of 500 Mcf per day. It is stated that Kokomo would reimburse Applicant 10 percent of the volumes transported to account for fuel use and loss. Further, Applicant states that it has received, as partial consideration for the proposed transportation service, the option to purchase at its Kiowa County receipt point whatever volumes of gas transported under the agreement that Kokomo does not need. The price to be paid for such sales would be the applicable area rate as determined by the Commission, plus any additional charges attributable to transporting the gas to Applicant, it is indicated.

Applicant states that it has sufficient excess capacity within its system to render the proposed service without adversely affecting its other custom-

ers. The application further states that the proposed service is the most efficient and economical way of transporting Kokomo's Texas County gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36316 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-625]

RMNG GATHERING CO.

Petition To Amend

DECEMBER 21, 1978.

Take notice that, on December 4, 1978, RMNG Gathering Co. (RMNG), 420 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203, filed in Docket No. CP77-625 a petition to amend the order issued December 6, 1977, in the same docket (order), to authorize the expansion of the transportation for and exchange of natural gas with Northwest Pipeline Corporation (Northwest), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The following numbered paragraphs relate statements made in the instant Petition to Amend:

(1) RMNG was authorized in the order to transport for and exchange gas with Northwest pursuant to a gas transportaton and exchange agreement dated February 2, 1977 (agreement). RMNG filed its first petition to amend the order on June 22, 1978, to request authorization for the transportation and exchange of natural gas from additional sources, pursuant to amendments to the agreement dated September 12, 1977, and February 20, 1978.

(2) RMNG and Northwest have further amended their agreement to increase the number of gas sources covered in their agreements. Specifically, the additional wells are, by date of the amendment:

(a) June 21, 1978—Texas Gas Exploration Nos. 43-3, 43-4, and 22-9, Garfield County, Colorado.
(b) July 18, 1978—Culver Gov't No. 1, Mesa County, Colorado, and Federal 2-3-8-104, Garfield County, Colorado.
(c) October 3, 1978—Palmer Federal Nos. 6-3, 6-13, and 18-2, Garfield County, Colorado.
(d) October 5, 1978—Palmer Federal Nos. 5-3 and 29-16, Garfield County, Colorado; Palmer Federal No. 33-13, Grand County, Utah.
(e) October 6, 1978—Ferguson No. 3-9, Garfield County, Colorado.

(3) RMNG and Northwest, on October 4, 1978, amended their agreement to reflect the addition of certain acreages which would be subject to the agreement; these acreages are located in Grand County, Utah, and Garfield County, Colorado.

(4) The transportation charge of 8.0 cents per Mcf of gas which RMNG is presently authorized to receive from Northwest would remain the same for the additional volumes of gas from the wells listed in paragraph (2) above.

(5) The wells listed in paragraph (2) above are expected to increase the deliveries to Northwest for exchange by RMNG from 950 to 4,380 Mcf of gas per day.

(6) Northwest would construct any necessary jurisdictional facilities pursuant to the budget-type certificate authorization issued to it in Docket No. CP77-507.

RMNG seeks an amendment to the order to authorize the transportation and exchange of natural gas pursuant to the agreement, as amended on June 21, July 18, October 3, 4, 5, and 6, 1978.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36317 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-102]

SOUTHERN CALIFORNIA LNG TERMINAL CO.

Application

DECEMBER 21, 1978.

Take notice that on December 4, 1978, Southern California LNG Terminal Company (SoCal), 523 West Sixth Street, Los Angeles, California 90014, filed in Docket No. CP79-102 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of liquefied natural gas (LNG) terminal facilities at Deer Canyon, Ventura County, California, as more fully set forth in the application on file with the Commission and open for public inspection.

The following numbered paragraphs contain statements related in the application:

(1) SoCal has received assured commitments of LNG delivery from Ecuador in excess of the vaporous equivalent of 5,000,000 Mcf per day and from Saudi Arabia of the vaporous equivalent of 1,500,000 Mcf per day. SoCal anticipates LNG deliveries from Indonesia of the vaporous equivalent of 546,000 Mcf per day, the amount previously committed by that country to the United States. SoCal also anticipates deliveries of Alaska LNG in the volumes to be released for delivery to California, in the event LNG is forthcoming from Alaska.

(2) SoCal proposes to construct and operate at Deer Canyon, Ventura County, California, facilities to receive, unload, store, vaporize and transport imported and/or domestic LNG. These facilities are:

(a) *Terminal facilities,* which would have the capability of receiving, unloading, storing, and vaporizing LNG transported by ship to Deer Canyon.

This facility would have an initial daily capacity of 1,300,000 Mcf of natural gas with a daily peaking capacity of an additional 300,000 Mcf. The design contemplates expansion to a daily capacity of 5,000,000 Mcf, and an additional daily peaking capacity of 1,000,000 Mcf.

(b) *Pipeline facilities,* which would consist of 62.5 miles of 32-inch pipeline to be constructed from Deer Canyon to the existing facilities of other pipeline systems. Although existing pipeline facilities would be utilized to the greatest extent possible, SoCal anticipates that some additional pipeline facilities may be required, for which additional filings would be made.

(3) Western LNG Terminal Associates has now pending in Docket No. CP75-10 an application similar to that requested herein for authorization to construct and operate an LNG terminal at Point Conception, California.

SoCal has not yet stated the estimated cost of the proposed facility.

SoCal proposes to offer its services to all qualified companies having potentially viable LNG projects if those companies desire to avail themselves of such services, subject to obtaining requisite regulatory authorizations and the ability to finance the facilities required.

SoCal states that it seeks conditional approval for its proposals, with the condition being the need for further and future authorization by the Commission of applications which would be filed by the future customers of SoCal for its services. SoCal indicates that as the Commission approves the applications of its customers, SoCal would file additional information with the Commission so that it may evaluate the continuing development of the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SoCal to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36318 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-101]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Application

DECEMBER 21, 1978.

Take notice that on December 4, 1978, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-101 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction and acquisition, during the calendar year 1979, and operation of facilities to take natural gas which will be purchased from producers and other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system and to the systems of other natural gas companies authorized to transport for or exchange with Applicant supplies of natural gas in areas generally coextensive with such systems.[1]

[1]The instant application does not set forth proposed total or single project expenditure limitations. Applicant states that it requests a waiver of § 157.7(b)(1)(ii) of the Regulations under the Natural Gas act (18 CFR 157.7(b)(1)(ii)). In the form of notice included pursuant to § 157.6(b) of the regulations under the Natural Gas Act (18 CFR 157.6(b)), Applicant sets forth a proposed total project expenditure limitation of $12,000,000 and proposed single onshore and offshore project expenditure limitations of $1,500,000 and $2,500,000, respectively.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-36319 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. RA79-3]

TEXACO, INC.

Filing of Petition for Review

DECEMBER 21, 1978.

Take notice that Texaco, Inc. (Texaco) on December 1, 1978, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of Secretary of Energy issued on October 4, 1978, denying in part, Texaco's request for exception relief.

Copies of the petition for review have been served on the Secretary, De-

partment of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before January 5, 1979 file a petition to intervene 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). Any person wishing to become a party or to participate as a party must file a petition to intervene. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36320 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP74-33]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition to Amend Further

DECEMBER 21, 1978.

Take notice that on December 6, 1978, Transcontinental Gas Pipe Line Corporation (Petitioner), Post Office Box 1396, Houston, Texas 77001, filed in Docket No. CP74-33 a petition to amend further the order issued February 26, 1975, as amended, in Docket No. CP74-33 pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in storage allocation at the Washington Storage Field, St. Landry Parish, Louisiana, for one of its customers, Eastern Shore Natural Gas Company (Eastern Shore), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

Petitioner states that Eastern Shore desires to increase its allocations of Washington Storage field service by 160,000 dekatherms (dt) equivalent of natural gas in the 1979-80 season and by 70,000 dt in the 1980-81 season in order to transfer some of its summer gas supply to winter operations for projected high priority sales. Petitioner further states that no additional facilities are required to render the additional service, for which Eastern Shore has executed a service agreement under Rate Schedule WSS.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36321 Filed 12-28-78; 8:45 am]

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1) it was transferred to the Commission.

[6740-02-M]

[Docket No. CP79-96]

UNITED GAS PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 7, 1978, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed an application in Docket No. CP79-96 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport gas for Natural Gas Pipeline Company of America (Natural), and to construct the necessary facilities therefor, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Natural and Applicant, on November 1, 1978, executed an agreement which provides for Applicant to transport up to 50,000 Mcf per day, less an allowance for fuel and company-used gas, from delivery points in Cameron Parish and Vermilion Parish, Louisiana, to a proposed point of interconnection between the parties' systems in Panola County, Texas. Applicant proposes to construct the necessary facilities in Panola County at a cost of $28,105. The proposed trnsportation service would end upon the completion of the pipeline facilities proposed by Natural in Docket No. CP78-524, or one year from the date of the initial delivery, whichever is earlier. The rate agreed upon by the parties is 23.29 cents per Mcf of gas, or any superseding effective rate.

The proposed transportation service is stated to be necessary until Natural's facilities proposed in Docket No. CP78-524 are completed, to enable Natural to avoid the minimum-day violation and take-or-pay exposure of certain gas purchase contracts, and to allow more efficient use of its gas supplies.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the apropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36322 Filed 12-28-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-103]

UNITED GAS PIPE LINE CO. AND MICHIGAN WISCONSIN PIPE LINE CO.

Application

DECEMBER 21, 1978.

Take notice that on December 5, 1978, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 and Michigan Wisconsin Pipe Line Company (Mich-Wis), One Woodard Avenue, Detroit, Michigan 48226, hereinafter referred to as Applicants, filed in Docket No. CP78-103 an application pursuant to section 7(c) of the Natural Gas Act for a certificate

of public convenience and necessity seeking authorization to construct and operate pipeline and related facilities necessary to connect gas supplies located in High Island Blocks A-279 and A-288, offshore Texas, to the pipeline system of High Island Offshore System (HIOS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The following numbered paragraphs contain statements related in the application:

(1) Applicants have purchased interests in natural gas supplies in Blocks A-279 and A-288, High Island Area, offshore Texas. Block A-279 interests are equally shared by Applicants; Block A-288 interests are divided as follows: 20% to United, 15% to Mich-Wis, and 50% uncommitted.

(2) To transport these supplies to shore, Applicants propose to construct and own approximately 2.4 miles of 12-inch pipeline and related facilities to connect Block A-279 to a sub-sea tap on HIOS 36-inch pipeline in Block A-280. HIOS has been authorized to transport gas for Applicants and others in Docket Nos. CP75-16, CP75-81, and CP75-104.

(3) United would be the agent of Mich-Wis in the construction of the proposed facilities, but Mich-Wis would operate them once constructed. Applicants have not yet finalized their exact relationship in regard to construction, operation and cost.

(4) The cost of the proposed facilities would be $2,966,323 and would be financed by Applicants from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-36323 Filed 12-28-78; 8:45 am]

[6570-06-M]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, certain functions relating to equal employment opportunity in the Federal Government will be transferred from the Civil Service Commission to the Equal Employment Opportunity Commission. For further details of the transfer and the regulations to remain in effect after January 1, see FR Doc. 78-36273 published elsewhere in today's FEDERAL REGISTER.

Notice is hereby given that effective January 1, 1979, requests, inquiries, and communications of the following nature are to be addressed to the Director, Office of Field Services, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506:

(1) Agency requests for reimbursable investigations pursuant to FPM Letter 713-21.

(2) Agency requests for assignment of a complaints examiner on a reimbursable basis pursuant to 5 CFR 713.218(a) (new 29 CFR 1613.218(a)).

(3) Agency's remittance of class complaints pursuant to 5 CFR 713.604(a) (new 29 CFR 1613.604(a)).

(4) Agency reports concerning precomplaint counseling and the status and disposition of complaints required by 5 CFR 713.241 (new 29 CFR 1613.241) and monthly agency reports on all pending complaints required by 5 CFR 713.220(c) (new 29 CFR 1613.220(c)).

(5) Agency's remittance of reprisal charges and reports of actions taken thereon required by 5 CFR 713.262(b)(1) (new 29 CFR 1613.262(b)(1)).

(6) Charging party's submission of a written statement on a reprisal charge on which the agency has not completed an inquiry within 15 calendar days of receipt as provided at 5 CFR 713.262(b)(1) (new 29 CFR 1613.262(b)(1)).

(7) Notice of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act as described at FPM Letter 713-30.

All requests, inquiries, and communications regarding the Equal Employment Opportunity Plans described at FPM Letter 713-40 are to be addressed to: Director, Office of Government Employment, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

All appeals of agency decisions and communications concerning such appeals are to be addressed to: Director, Office of Appeals and Review, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

Agency reports under the Minority Group Statistics System as required at 5 CFR 1613.302(e) should continue to be sent to the Civil Service Commission.

Signed this 15th day of December, 1978.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

[FR Doc. 78-36274 Filed 12-28-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services

MEETINGS

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 73 "Minimum Performance Standards (MPS) Marine Omega Receiving Equipment"
Notice of 5th Meeting, Tuesday, January 16, 1979—9:30 a.m.
Conference Room
Maritime Institute of Technology & Graduate Studies (MITAGS)
5700 Hammonds Ferry Road
Linthicum Heights, Maryland 21090

AGENDA

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Reports of Working Groups.
4. Review of draft MPS.

M. H. Carpenter, Co-Chairman
CDR T. P. Nolan, Co-Chairman
Maritime Institute of Technology & Graduate Studies
Linthicum Heights, Maryland 21090

Phone: (301) 636-5700

Executive Committee Meeting
The next Executive Committee Meeting will be on Thursday, January 18, 1979, 9:30 a.m. in Conference Room 7200, Nassif Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Discussion and possible vote on Petition to Amend By Laws, Article IV, Section 1.
4. Discussion and possible vote on Resolution to Amend Constitution, Article VI, Section 8.
5. Acceptance of FY-78 Audit Report.
6. New business.

Special Committee No. 71 "VHF Automated Radiotelephone Systems"
Notice of 14th Meeting, Tuesday, January 23, 1979—10:00 a.m. (Full day meeting)
Conference Room A-110
1229—20th Street, N.W.
Washington, DC

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Presentation and Discussion:
(a) Digital Selcall Functions and Formats
(b) Implementation and Cost

John J. Renner, Chairman SC-71
Advanced Technology Systems, Inc.
3426 N. Washington Blvd.
Arlington, VA 22201
Phone: (703) 525-2664

Special Committee No. 74 "Digital Selective Calling"
Wednesday, January 24, 1978—9:30 a.m. (Full-day meeting)
Conference Room 7200—Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.
Notice of 1st Meeting.

AGENDA

1. Review of Terms of Reference.
2. Committee organization.
3. Establishment of meeting schedule.

Captain B. F. Hollingsworth, Chairman, SC-74
U.S. Coast Guard Headquarters
Washington, D.C.
Phone: (202) 426-1345

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-36308 Filed 12-28-78; 8:45 am]

[6712-01-M]

TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: December 18, 1978.

Released: December 20, 1978.

Notice is hereby given, pursuant to Section 1.572(c) of the Commission's Rules, that on January 31, 1979, the TV broadcast applications listed in the attached Appendix will be considered ready and available for processing. Pursuant to Sections 1.227(b)(1) and 1.591(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on January 30, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on January 30, 1979.

Any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to Section 309(d) (1) of the Communications Act of 1934, as amended, is directed to Section 1.580(i) of the rules which specifies the time for filing and other requirements relating to such pleadings.

BPCT-5227 (new), Boulder, Colo., FAMILY TELEVISION, INC., Channel 14. ERP: Vis. 900 kW; HAAT: 484 ft.
BPCT-780720IB (KTVO-TV), Kirksville, Mo., KTVO, INC., Channel 3. Change transmitter location; change ERP. Vis. to 84 kW; and change HAAT to 1973 ft.
BPCT-780810IA (new), New Orleans, La., LESTER SUMRALL EVANGELISTIC ASSOCIATION, INC., Channel 20. ERP. Vis. 3160 kW(M); HAAT: 997 ft.
BPCT-780901KF (new), Albany, N.Y., American International Communications Corp., Channel 23. ERP: Vis. 5000 kW; HAAT: 1200 ft.
BPCT-780907KP (new), Palm Beach, Fla., WILSHIRE CORP., Channel 53. ERP: Vis. 822 kW; HAAT: 478 ft.
BPCT-781002KL (new), Ventura, Calif., KEMO-TV, INC., Channel 16. ERP. Vis. 5.25 kW; HAAT: 755 ft.
BPCT-781005KE (new), Mt. Clemens, Mich., ADELL BROADCASTING CORP. ERP. Vis. 1243 kW; HAAT: 614 ft.
BPCT-781005KF (new), Seaford, Del., JOHN R. POWLEY, Channel 38. ERP. Vis. 259 kW; HAAT: 317 ft.
BPCT-781106KE (new), Casper, Wyo., THE CHRYSOSTOM CORP., Channel 14. ERP. Vis. 1456 kW; HAAT: 1887 ft.
BPCT-781107KE (new), Joliet, Ill., LAGO GRANDE TELEVISION CO., Channel 66. ERP. Vis. 4,170 kW; HAAT: 1,460 ft.
BPCT-781109KE (new), Eau Caire, Wis., LIBERTY TELEVISION, INC., Channel 18. ERP. Vis. 500 kW: HAAT: 744 ft.
BPCT-781113KE (new), El Centro, Calif., PACIFIC MEDIA CORP., Channel 7. ERP. Vis. 316 kW: HAAT: 1408 ft.
BPCT-781113KF (WNNE-TV), Hanover, N.H., NORTHERN NEW ENGLAND TELEVISION, Channel 31. Change ERP. Vis. 2240 kW(M); HAAT: 2230 ft.
BMPCT-781103KG (WLFL-TV), Raleigh, N.C., CAROLINA CHRISTIAN COMMUNICATIONS, INC., Channel 22. Change transmitter location; change studio location; change ERP. Vis. to 1158 kW; and HAAT: 1148 ft.
BPCT-5225 (new), Vallejo, Calif., REDWOOD TELEVISION MINISTRIES, INC., Channel 66. ERP. Vis. 669 kW: HAAT: 1592.1 ft.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-36227 Filed 12-28-78; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[No. 78-739]

FEDERAL CHARTERING AUTHORITY FOR MUTUAL SAVINGS BANKS

Announcement of Informal Public Hearings and Solicitation of Written Views and Comments

DECEMBER 22, 1978.

AGENCY: Federal Home Loan Bank Board ("Bank Board").

ACTION: Announcement of informal public hearings and solicitation of written views and comments.

SUMMARY: Title XII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Act of November 10, 1978, P.L. No. 95-630, 92 Stat. 3641), goes into effect on March 11, 1979. It authorizes the Bank Board to issue, if not in contravention of State law, Federal charters to existing State-chartered mutual savings banks and to provide for the examination, operation, and regulation, of any mutual savings bank which has converted to Federal charter.

The Bank Board feels that it is in the public interest for it to elicit the views and comments of all interested parties on the manner in which the Bank Board should exercise the authority and responsibility conferred by Title XII.

PROCEDURES: The procedures with respect to the conduct of the public hearings and the solicitation of written views and comments will be:

Each person or representative of a group who wishes to submit written views or comments may do so. Written material will be sent to the Bank Board, Office of the General Counsel (address below) and must be received by 5:30 p.m. EST, January 22, 1979.

Written views and comments may be submitted without participation in the public hearing; submission of views and comments does not bar participation in the public hearing.

Each person or representative of a group who wishes to make a presentation must make a request to do so in writing. A written copy of a statement or a summary of points to be covered must accompany the request. Requests and accompanying material will be sent to the Bank Board, Office of the General Counsel (address below) and must be received by 5:30 p.m. EST, January 22, 1979.

Written views and comments, statements, and summaries of points to be covered will be available for public inspection at the Bank Board, Office of the General Counsel (address below) when received.

Participants will be notified by Jnuary 24, 1979, of their order of appearance. A list of participants, and their order of appearance, will be available for public inspection at the Bank Board, Office of the general Counsel (address below) after this date.

The presiding Hearing Officer will have complete charge of the hearings and authority to do all things necessary and proper for the orderly conduct of the hearings. The Hearing Officer may exclude testimony, data and material which is deemed improper, irrelevant or repetitive.

Normally, a maximum of 15 minutes will be allowed for individuals and 30 minutes for group representatives. To the extent possible, groups having substantially similar positions are encouraged to select just one representative.

Hearing participants will not be permitted to examine or cross-examine other participants, although the Hearing Officer may question participants for the purpose of obtaining a fuller exposition of their views.

There shall be no provision for briefs or for oral argument at the conclusion of the hearings.

The foregoing rules may be relaxed by the Hearing Officer, if in his or her judgment such relaxation would aid the Bank Board in reaching a decision on the merits of proposals. If deemed necessary, the Hearing Officer may also extend the hearings or schedule additional hearings.

The hearing proceedings shall be transcribed. All interested parties may, after the close of the hearings and as soon as the transcript of the hearings has been prepared, obtain copies of the transcript through the procedure set out in Part 505 of the General Regulations of the Bank Board (12 C.F.R. Part 505).

ADDRESSES—TIME AND DATE OF HEARING: All written communications should be directed to the Bank Board, Office of the General Counsel, 1700 G Street, N.W., Washington, D.C. 20552. Please legend all communications: "Federal Mutual Savings Bank Project".

The public hearings will begin at 9:00 a.m. EST in the Amphitheater on the second floor of the Bank Board building at 1700 G Street, N.W., Washington, D.C., January 26, 1979. Unless the hearing is extended or re-scheduled in accordance with the above procedures, the hearing will end at 5:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Loren J. Friesen, Attorney, Bank Board, Office of the General Counsel, Washington, D.C.; phone: (202) 377-6454.

SUPPLEMENTARY INFORMATION: The Bank Board specifically invites interested parties to comment on the following issues:

1. Section 1202 of Title XII provides that in issuing charters for Federal savings and loan associations and Federal mutual savings banks that the Bank Board shall give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States". How may the Bank Board insure that a Federal mutual savings bank will be committed to home-financing? Should there be, for example, a minimum residential mortgage to total asset ratio that the Bank Board should require of applicants for a Federal mutual savings bank charter?

2. Should the Bank Board adopt the "trustee" or "trustee and corporator" system of management for Federal mutual savings banks, or should savings accountholders, checking accountholders, where permitted, or borrowers be accorded membership voting privileges with the right to elect a governing board of directors or trustees? If the latter, what should be the extent of their voting privileges?

3. Should the governing boards, officers and other employees of Federal mutual savings banks be subject to the same conflict of interest and related rules as pertained to the institution with which they are affiliated when it held a State-charter, if such rules are more restrictive than those currently applicable to Federal insured savings and loan associations?

4. In the event of liquidation of a Federal mutual savings bank, or other situation wherein the priority of accountholders is at issue, should checking accounts have the same priority as savings accounts, and the same right to a pro-rata participation in the distribution of the institution's assets?

5. To what extent should the Bank Board apply its existing Federal and Insurance Regulations (12 C.F.R. Part 541 *et seq.* and Part 561 *et seq.*) to Federal mutual savings banks? With respect to what issues may new regulations be required?

6. What criteria should the Bank Board consider in acting upon an application for a Federal mutual savings bank charter?

7. Should the Bank Board in any way restrict, or qualify the grandfathering authority conferred by Title 12?

The aforementioned issues should not be considered exclusive, and comments on other related questions to the Bank Board's Title XII authority will be welcomed.

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-36256 Filed 12-28-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by January 8, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done:

Agreement No.: T-3752.

Filing Party: Mr. Gary T. Ferrulli, Director, Regulatory Affairs, Sea-Land Service, Inc., 10 Parsonage Road, P.O. Box 900, Edison, N.J. 08817.

Summary: Agreement No. T-3752, between Hanjin Container Lines, Co., Ltd., (Hanjin) and Sea-Land Service, Inc., (Sea-

Land), is a Terminal Service Agreement whereby Sea-Land agrees to perform terminal services for Hanjin's vessels at the port facilities of Kobe and Yokohama, Japan. Sea-Land shall provide berth space, yard space, container gantry cranes, and adequate facilities and rolling stock for the handling of containers. Sea-Land shall perform the following services for Hanjin: arranging for the entry and clearance of vessels, vessel clearance documentation, vessel berthing and related services, arranging for the survey and repair of vessels, stevedoring services, documentation, maintenance and repair of containers/chassis, Container Freight Station services, and assisting Hanjin in contracting with third parties for inland transportation of containers and cargo. As compensation, Hanjin shall pay Sea-Land according to a schedule of rates outlined in the agreement.

By Order of the Federal Maritime Commission.

Dated: December 22, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-36224 Filed 12-28-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 21, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 16, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

INTERSTATE COMMERCE COMMISSION

The ICC requests clearance of revised Annual Report, Form R-4, required to be filed by some 103 railroad lessors, pursuant to Section 20 of the Interstate Commerce Act. Data are used for economic regulatory purposes. Revisions made in this annual report form resulted from the adoption of Docket No. 36367, Revision to the Uniform System of Accounts (49 CFR 1201), decided June 13, 1977. New schedule numbers and account reference changes are the only significant changes. The ICC estimates reporting burden for carriers will average 233 hours per report. Reports are mandatory and available for use by the public.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc. 78-36287 Filed 12-28-78; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[GSA Order PBS 1095.1D]

IMPLEMENTATION OF ENVIRONMENTAL POLICY

Preparation Procedures

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et. seq.) and Section 1500.3(a) of the Council on Environmental Quality Guidelines for the Preparation of Environmental Impact Statements (38 FR 20550), notice is hereby given that the General Services Administration, Public Buildings Service, has revised internal procedures for preparing environmental impact statements for facility planning programs. These programs include acquisition, leasing, design, construction, management, and alteration of GSA property.

Dated: December 7, 1978.

JAMES B. SHEA, JR.,
Commissioner,
Public Buildings Service.

DECEMBER 7, 1978.

GSA ORDER

Subject: Implementation of environmental policy.

1. *Purpose.*

a. This order implements GSA Order ADM 1095.1B by prescribing procedures for Public Buildings Service (PBS) facility planning programs in acquisition, leasing, design, construction, management, and alterations to General Services Administration (GSA) property.

b. This order shall be further implemented by the publication of a service order for each region of the Public Buildings Service. Each regonal service order shall be applicable to PBS facility planning programs in acquisition, leasing, design, construction, management, and alteration to GSA property. Each regional service order shall be approved by the Assistant Commissioner for Space Management (PR) prior to its implementation.

2. *Cancellation.* PBS Order 1095.1C is canceled.

3. *Background.*

a. The laws, Executive Orders, and directives to be implemented include the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321, *et seq.*, hereinafter referred to as NEPA); Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality;" section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); Executive Order 11593 of May 13, 1971, entitled "Protection and Enhancement of the Cultural Environment;" GSA Order ADM 1095.1B, entitled "Environmental considerations in decisionmaking;" GSA Order PBS 1022.1, entitled "Protection of Historic Properties;" Executive Order 12088 of October 13, 1978, entitled "Federal Compliance with Pollution Contol Standards;" and the Guidelines issued by the Council on Environmental Quality (CEQ) for preparing environmental impact statements, (hereinafter referred to as the Guidelines), published in the FEDERAL REGISTER August 1, 1973, 38 FR 20550, and amended in the FEDERAL REGISTER on August 7, 1973, 38 FR 21265.

b. Section 102 of NEPA directs all Federal agencies to the fullest extent possible: (1) to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment; (2) to identify and develop methods and procedures which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; (3) to include in every recommendation or report on proposal for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official which includes to the fullest extent possible the following:

(a) The environmental impact of the proposed action;

(b) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(c) Alternatives to the proposed action;

(d) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(e) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

c. Excecutive Order 11514 effectuates the purpose of NEPA, and the revised Guidelines implement NEPA.

4. *Nature of revision.* This revision reflects GSA organizational changes, the transfer of certain responsibilities from CEQ to EPA, and recently issued directives concerning the change in environmental impact statement filing procedures.

5. *Procedures.*

a. Environmental assessments, negative declarations, draft and final EIS's prepared under the direction of the Regional Commissioners on planning, acquisition, and alteration programs shall be submitted to the

Assistant Commissioner for Space Management (PR). The Assistant Commissioner for Space Management (PR) shall forward copies to the Office of General Counsel (L), and other appropriate offices. All such review periods shall run concurrently for a period of 10 workdays from the date of receipt for negative declarations and environmental assessments. The review period shall be 15 workdays from the date of receipt for draft and final EIS's. Any requests for additional information or revision shall be directed to the appropriate service or staff office program official. All comments shall be forwarded to the Assistant Commissioner for Space Management. All comments so forwarded shall be prepared in a consolidated response to the region. The Commissioner, PBS (P), shall reconcile any differences concerning the need for additional information or revision that may arise between program officials and other reviewing offices, except that final approval for legal sufficiency shall be the responsibility of the General Counsel or his designee. Environmental assessments shall be attached to negative declarations. Unless otherwise notified within 10 workdays from receipt of the negative declaration-environmental assessment and 15 workdays from receipt of the draft EIS or final EIS, the Assistant Commissioner for Space Management, and/or the regional office shall assume the environmental assessment and negative declaration or draft EIS or final EIS are adequate.

b. The Regional Administrator shall retain the nondelegable authority, subject to the terms and details herein, for final approval of negative declarations and both draft and final EIS's. Further, the Regional Administrator maintains the responsibility for transmitting draft and final EIS's to the Environmental Protection Agency (EPA), heads of other Federal agencies, Governors, Senators, and Congressmen. The preparation of EIS's shall be in cooperation and coordination with all appropriate PBS officials. Distribution of EIS's shall be carried out consistent with the terms and conditions of GSA Order ADM 1095.1B. Regional offices shall also maintain responsibility for responding to substantive comments received on the draft EIS and for the preparation and publication of the final EIS. Additional procedures for the implementation of this order are contained in the attachment of this order.

6. *Reports.* The reports control symbol PBS-123 has been assigned to the report required by this directive.

JAMES B. SHEA, Jr.,
Commissioner,
Public Buildings Service.

Figure 1. Supplemental distribution

Office	Copies
All Regional PG's	15
Central Office, PRE	50

ATTACHMENT

IMPLEMENTATION OF ENVIRONMENTAL POLICY

1. *Responsible officials for determining the course of environmental action.* The Regional Commissioners, PBS, have the initial responsibility for making the threshold decision for (1) determination whether an action is "a major Federal action significantly affecting the quality of the human environment", and (2) the preparation and documentation of files with environmental impact assessments (EIA), EIA's resulting in negative declaration or draft and final environmental impact statements (EIS). The PBS Assistant Commissioners, may request the preparation of EIA's or draft and final EIS's from the Regional Commissioners. However, when the proposed action has been designated as a project pursuant to GSA Order, Project Management in the Public Buildings Service (ADM 5400.24), such determination shall be made only after consultation with the Project Manager.

a. Assistant Commissioner for Space Management (PR), is responsible for the overall direction of environmental protection within GSA and those policy and procedure programs listed in (par. 1 of the transmittal order PBS 1095.1D) and the following:

(1) Provide professional and technical guidance to the Commissioner, PBS (P), Assistant Commissioners, PBS, and Regional Commissioners, PBS;

(2) Review, coordinate and consolidate the PBS EIA/EIS review comments by the Office of General Counsel (L), and other appropriate service and staff offices and transmit such comments to the appropriate office;

(3) Consult with the Office of General Counsel (L) on matters pertaining to compliance with environmental laws within GSA and on matters relating to environmental protection in PBS;

(4) Develop and coordinate service orders, regulations and guidance on the PBS environmental programs;

(5) Assist the regional offices in scheduling environmental considerations to preclude delays in completing those actions defined in this attachment;

(6) Review new environmental technology, research and development; and

(7) Initiate new environmental programs.

b. Regional Administrators shall have the following responsibilities to:

(1) Approve by signature negative declarations prepared by the Regional Commissioners, PBS; and

(2) Transmit draft and final EIS's to the Environmental Protection Agency (EPA), heads of other Federal agencies, Governors, Senators, and Congressmen by signing appropriate transmittal letters.

c. Regional Commissioners, PBS, shall have the following responsibilities to:

(1) Make the threshold decision of need for an EIA/EIS, and prepare and sign negative declarations that require the subsequent approval of the Regional Administrator;

(2) Maintain a continuing review of activities which have potential significant environmental impact as outlined in this attachment to the order;

(3) Establish the appropriate points in time for the reassessment of developing projects for cases not covered in this attachment to the order;

(4) Prepare and process, through PR, draft and final EIS's and subsequently distribute the EIS's to Federal, State, and local officials, and interested individuals other than those to whom the Regional Administrator transmits the impact statement;

(5) Conduct public meetings, issue press announcements and maintain files for public review; and

(6) Prepare and monitor a schedule for environmental planning considerations to preclude delays in completing those actions defined in this attachment;

(7) Review new environmental technology, research and development;

(8) Initiate new environmental programs;

(9) Develop and publish a regional service order that further implements this order; and

(10) Prepare and submit to PR quarterly reports on regional NEPA actions.

d. The Assistant Commissioners for Buildings Management (PB) and Construction Management (PC), shall be responsible for maintaining program review of EIS's to ensure program activities are compatible with environmental protection and in compliance with GSA Order ADM 1095.1B. They are also responsible for the following:

(1) Review of new environmental technology, research and development;

(2) Initiation of new environmental programs;

(3) Development and revisions to orders, handbook specifications and directives to the field;

(4) Initiation of EIA's and EIS's;

(5) Maintenance of continuing review of developing projects for environmental impact and establish the appropriate points in time for the reassessments not covered in this attachment to the order; and

(6) Establishment of continual liaison with the Office of Space Management on environmental protection programs.

2. *Determination of what is a "major Federal action significantly affecting the quality of the human environment."* This determination is based on the circumstances of the proposed action. The determination shall be made as part of the decisionmaking process.

a. Types of actions which have the potential of being major Federal actions requiring an assessment of their effect on the environment are:

(1) Recommendations or reports concerning legislation, including requests for appropriations, proposed by GSA or members of Congress resulting in physical action involving, but not limited to, proposals for new Federal construction under the Public Buildings Act of 1959, as amended, (40 U.S.C. 601, *et seq.*).

(2) Administrative action involving:

(a) Procurement and renewal of space through major lease, lease-construction or construction of buildings for Federal agency use;

(b) Extensions, repair and alterations to public buildings;

(c) Use of GSA property through lease, permit, or license resulting in a significant change in usage of the property;

(d) Proposed exchanges of real property to acquire sites under the Public Buildings Act of 1959, as amended;

(e) Relocation of employees causing significant change in employee transportation patterns, or the travel time to the new location to exceed 45 minutes, or a 20 percent increase in travel time if it presently exceeds an average of 45 minutes;

(f) All project development reports;

(g) Site Investigation and Selection Reports.

(3) Formulation and issuance of regulations, procedures, and policies which may have environmental consequences.

b. Actions significantly affecting the quality of the human environment are those which:

(1) Impact upon the environment even if, on balance, beneficial effects outweigh the detrimental ones;

(2) Curtail the range of possible beneficial uses of the environment including irreversible and irretrievable commitments of resources;

(3) Serve short-term uses rather than long-term environmental goals;

(4) May be localized in their effect, but nevertheless, have a harmful environmental impact; and

(5) Are attributable to many small actions, possibly taken over a period of time, which collectively can be defined as a major action with a significant impact (either adverse or beneficial).

3. *Changes having an impact on the quality of the human environment.* A significant change is any change which significantly alters, disrupts, destroys, or transforms any aspect of the physical, social or aesthetic environment. Such a change may have either an adverse or beneficial impact on the quality of the environment.

4. *Application of standards.* All GSA operated and controlled facilities shall be operated in accordance with established Federal and State environmental standards. Where both substantive Federal and State standards exist, the more stringent of these standards shall apply.

5. *Criteria.* Factors having potential and identified impact which may significantly affect the quality of human environment include but are not limited to the following:

a. The readily recognizable physical factors; (e.g., air and water quality, ambient noise levels, sewage and waste disposal, etc.);

b. Changes in land use or zoning;

c. Socio-economic factors, (i.e., proximity to low and moderate income residential housing on a nondiscriminatory basis, necessity for relocation of residential properties, changes in traffic patterns causing changes in mode of transportation, traffic congestion or increase in distance and commuting costs to the proposed building occupants; known environmentally controversial aspects of the project); and

d. Cultural, architectural, or archeological aspects of a project illustrated by possible infringement on historic properties or disturbances to important archeological artifacts. Environmental impact assessments (EIA) and environmental impact statements (EIS) for projects that may affect historic and cultural properties shall be written to demonstrate agency compliance with section 106 of the National Historic Preservation Act of 1966 and the implementing procedures of the Advisory Council on Historic Preservation (36 C.F.R. part 800). Historic properties are defined as properties listed in the National Register of Historic Places, or determined eligible for listing in the National Register. Contact with the State Historic Preservation Officer (SHPO) shall be documented with a letter from the SHPO and included in the EIA or the appendix of the EIS. (For further clarification on historic preservation procedures and how to determine eligibility for listing in the National Register, refer to PBS 1022.1.)

6. *Categorized major PBS actions.* To clarify threshold decisions and to categorize typical PBS actions requiring environmental analysis, the following categories have been identified:

a. *Category I., Projects which will almost always require an EIS.*

(1) Facility planning program (a series of actions related by type or geographic area) such as the following:

(a) Master Plan for federally owned property; and

(b) Leasing actions planned for a given geographical area for a 3- to 5-year period.

(2) Construction Projects.

(a) Federal construction or lease construction projects requiring a prospectus.

(b) Projects undertaken for another Federal agency where the assessment process identifies significant known or potential environmental impact(s). An example of a proposed project that would always require an EIS is development of a Federal correctional center.

(c) Projects recommended under section 11(b) of the Public Buildings Act of 1959, as amended.

(3) All PBS projects where the assessment process identifies known or potential significant environmental impact.

b. *Category II., Projects which normally require an environmental assessment to determine if an EIS is necessary.*

(1) Federal construction or lease construction projects that do not require a prospectus, including those undertaken for another Federal agency.

(2) Repair and alteration projects.

(a) Those projects which require a prospectus.

(b) Those projects which require a major change in energy requirement or source.

(c) Those projects which affect those characteristics which qualify a property or object as historically or culturally significant.

(d) Acquisition and/or alteration of space for a laboratory which will utilize dangerous or hazardous chemicals, drugs or radioactive materials.

(3) Major leases for new space in existing buildings where a potential environmental controversy has been identified.

(4) Real property acquisition and lease acquisition expected to result in new construction.

(5) A transfer of employees that would cause a significant change in employee transportation mode, patterns, and/or travel time.

(6) Acquisition, leasing, construction, and alteration projects which are a part of a program, such as a master plan, for which an EIS has previously been filed.

(NOTE: *Emergencies.* Situations that may make it necessary to proceed with an action without full compliance with the provisions of this order: (1) A major action which must be undertaken immediately because of fire, public or safety hazard. The responsible regional official shall notify the Regional Counsel immediately and initiate procedures for consultation with EPA; and (2) A project in which the Commissioner, PBS (P), after consultation with EPA, has determined that a public or governmental exigency is present. This would be restricted to projects where a limited environmental impact has been identified, but where action to acquire or renovate property is neither irreversible nor irretrievable.)

7. *Consideration of Cumulative Impacts.* Each proposed project or action shall be reviewed and a determination made as to whether it constitutes a "major Federal action." The responsible regional official should consider that the effect of decisions can be individually limited but cumulatively significant. An environmental impact statement should be prepared if it is reasonable to expect a cumulatively significant impact on the environment from the Federal action, as indicated in the following:

a. Over a period of years, decisions by one or a number of different agencies are made concerning certain types of projects or actions that individually are minor but collectively are major;

b. One decision involving a limited amount of money establishes a precedent for action in much larger cases or represents a decision in principle about a future major course of action; and

c. Several Government agencies individually make decisions about partial aspects of a major action.

8. *Environmental impact assessments (EIA).* a. The environmental impact assessment is one of the most important documents included in the decisionmaking process. The EIA is the basis for judgment by the "responsible official" and can be entered as evidence in hearings and court actions. Therefore, it is of utmost importance that the assessment be a full disclosure document, giving the reader a clear picture of existing and projected environmental conditions, a complete but concise description of the proposed action, and an in-depth evaluation of possible or probable impacts, both primary and secondary, which may be either beneficial or adverse. The EIA must include a list of Federal, State, and local officials who have been contacted and their comments. The assessment will result in the decision to prepare a negative declaration or a draft environmental impact statement.

b. The decision to prepare an EIA shall be made immediately subsequent to the initial identification of project need during the project planning stage. Its preparation shall be undertaken concurrently with the initial technical and economic studies for each project. In lease actions the assessment shall be completed and a determination for the necessity of an EIS shall be made prior to the issuance of a solicitation for offers.

c. For Federal construction projects involving the selection of a site and for lease actions involving the acquisition of an assignable option on a site and when the site is known, the EIA shall be based on the known site. For those projects in which the site is not known, the EIA shall be based on a delineated area. If the delineated area has been determined by applying the Area Delineation Model as provided in the HB, Space Requirements and Project Development (PBS P 7000.6), the EIA shall summarize the data and findings resulting from application of the model. If the delineated area has been determined to be in conformance with FPMR 101-18.100g, the EIA shall summarize the factors considered and the manner in which the delineated area was determined. (See also the HB, Acquisition of Leasehold Interests in Real Property (PBS P 1600.1).)

d. As the project develops all environmental considerations will be reevaluated continually by the appropriate officials. The EIA shall be updated with a reassessment if there has been no significant change in project scope or environmental impact. If the initial assessment was made on a delineated area and resulted in a negative declaration, a reassessment shall be made when a site is selected. For major repair and alteration projects and new Federal construction, a reassessment shall be made when working drawings and specifications are

completed. Other reassessments shall be made as deemed necessary by the responsible officials as defined by par. 1 of this attachment. (See subpar. 9f.)

9. *Negative declaration.* a. A negative declaration is an official administrative decision stating that an analysis of the environmental impact assessment (EIA) has been made and that the proposed action is not considered a major Federal action having a significant impact on the human environment and, therefore, will not require the preparation of an environmental impact statement.

b. When an EIA is completed by the regional staff, it shall be reviewed by the responsible regional official. If the review of the EIA indicates that the proposed project is not a major Federal action significantly affecting the quality of the human environment, then four copies of the EIA and a copy of the negative declaration signed by the Regional Commissioner, PBS, shall be submitted to the Assistant Commissioner for Space Management (PR). The original EIA and negative declaration shall remain in the regional office.

c. Upon receipt of the EIA, PR will forward copies to the Office of General Counsel (L) and other appropriate offices. All comments shall be reviewed, coordinated and consolidated by PR and transmitted to the submitting regional office within a time period not to exceed 10 full workdays from the date of receipt of the EIA by PR. A copy of the consolidated response will be forwarded to the Office of General Counsel (L). If not otherwise directed by PR within the 10-workday period, the responsible regional official may assume that the EIA is adequate and my proceed with obtaining approval of the negative declaration by the Regional Administrator. No action as defined in par. 14 shall be taken prior to the completion of the above process.

d. If during review of the assessment and negative declaration by the Office of Space Management (PR), it is determined that an environmental impact statement should be filed, the responsible regional official shall be so advised during the 10-workday period.

e. For proposed projects which require prospectus approval by the Public Works Committees of the Congress, two copies of the approved negative declaration with the environmental impact assessments attached shall be forwarded to PR so that the environmental assessment documents may accompany the prospectus to the Public Works Committees of Congress.

f. If an environmental assessment and negative declaration have been prepared on a delineated area, an updated assessment shall be prepared upon site selection. Should the responsible regional official conclude there are no known potential significant environmental impacts following the site selection stage, such official shall prepare and sign a confirmation of the negative declaration. Such confirmation shall have concurrence by the Regional Counsel. The confirmation of the negative declaration need not be forwarded to the Central office in these cases. However, should the updated assessment identify significant environmental impact on the quality of the human environment, the responsible regional official shall proceed with the preparation of the environmental impact statement and notify the Assistant Commissioner for Space Management (PR). In such cases, it may be necessary to reissue the solicitation for offers or invitations for bid, or cancel further acquisition actions until the full EIS process is complete.

10. *Draft environmental impact statement.* a. After an environmental impact assessment has been prepared and a determination made that the proposed action is a major Federal action significantly affecting the quality of the human environment, a draft environmental impact statement (EIS) shall be prepared. In cases where the site is not known, the draft EIS shall be based on a delineated area (DA). The DA shall be determined in accordance with the Area Delineation Model as provided for in PBS P 7000.6 or determined in accordance with FPMR 101-18.100g as provided for in PBS P 1600.1. The EIS shall summarize the data and findings resulting from use of the Area Delineation Model or describe the factors considered and the manner in which the delineated areas was determined.

b. At the earliest possible stage of draft EIS preparation, the office preparing the EIS shall consult with Federal, State, and local agencies to obtain information and views about potential impacts of a proposed action. The consultation process shall be accomplished in accordance with OMB Circular A-95, CEQ Guidelines, Subpart 101-19.100 of the Federal Property Management Regulations and the following:

(1) Projects resulting in construction shall be reviewed for environmental impact. State clearinghouses shall be consulted at the earliest practicable time in the planning of the project. In the development of a Project Development Report in the region, the Regional Administrator is required to contact the appropriate State, regional and local clearinghouses and other appropriate officials including U.S. Senators and Congressmen in a formal A-95 process.

(2) In addition, a copy of the letter to the state clearinghouse, issued in accordance with the provisions of the A-95 circular shall be forwarded to the Advisory Council on Historic Preservation and the Council on Environmental Quality.

(3) When the A-95 review process of a proposed project or the consultation with the clearinghouses take place prior to the filing of a draft EIS, the comments received represent input to the EIS.

(4) Federal agency comments received prior to filing of a draft EIS shall be attached to copies of the statement being sent to the agency submitting the substantive comment. The statements being sent to the clearinghouses shall include a listing of all agencies from which comments have been received.

c. *Technical content of draft statement.* The EIS includes:

(1) A description of the proposed action including the requisite information and technical data to permit a careful assessment by reviewing agencies of the environmental impact of the proposed action(s). Copies of site plans or topographic maps showing the property and the surrounding area shall be provided;

(2) The probable impact of the proposed action(s) on the environment, including impact on biological systems (e.g., wildlife and vegetation) and on physical systems (e.g., hydrology, air, noise, etc.). Consequences of direct and indirect impacts on the environment shall be included in the analysis. For example, any effect of the action on population distribution or concentration should be estimated and an assessment made of the effect of significant change in population patterns upon the resources of the impacted area (e.g., land use, water supply, public services, and traffic patterns);

(3) Any probable adverse environmental effects that cannot be avoided, such as water, air, or noise pollution, undesirable land use patterns, damage to ecological systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of NEPA. Where such unavoidable effects exist, a discussion of mitigating, neutralizing or eliminating measures should be included for each adverse effect;

(4) A rigorous exploration and objective evaluation of all reasonable alternative actions that might avoid some or all of the adverse environmental effects, including those alternatives outside of GSA's implementing authority. Analysis of alternatives, their costs, and impacts on the environment shall accompany the proposed action(s) through the agency review process to avoid premature foreclosure of options with less detrimental effects than the proposed action. If a cost benefit analysis on the proposed action(s) is prepared, it shall include a discussion of reasonable alternatives. The extent to which environmental costs have not been reflected in such analysis should be included in the EIS. However, information furnished by property owners, appraisers, or public officials regarding site pricing information, estimated site costs, appraisal reports on subsequent site selection or negotiations to acquire sites, shall not be included in draft or final EIS;

(5) The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity and a discussion of the extent to which the proposed action forecloses future options. This, in essence, requires assessment of the action(s) from the perspective that each generation is trustee of the environment for succeeding generations;

(6) Any irreversible and irretrievable commitments of resources, (i.e., land, labor, materials, natural and cultural resources), which would be involved in the proposed action(s) should it be implemented. Identify from the survey of unavoidable adverse impacts the extent to which the action(s) curtails the range of beneficial uses of the environment;

(7) A description of the extent and nature of the awareness of the action by public officials, public interest groups, neighborhood groups through newspaper articles, radio and television, meetings, public hearings, correspondence and other forms of contact; and

(8) A list of the agencies, groups, and individuals consulted in accordance with the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098), Executive Order 11512 and Office of Management and Budget Circular A-95.

11. *Submission and distribution of draft environmental impact statements.* Initially, draft EIS's shall be processed as follows:

a. Four copies of the preliminary draft environmental impact statement shall be transmitted to the Assistant Commissioner for Space Management (PR) for a review period of 15 workdays to begin the date of receipt by PR. Space Management will forward copies to the Office of General Counsel (L) and other appropriate offices. All comments will be reviewed, coordinated, and

consolidated by PR and transmitted to the submitting office within the 15-workday time period. A copy of the consolidated response will be forwarded to the Office of General Counsel. Space Management may require additional information or revisions to the statement prior to its publication. If not otherwise directed by PR within the 15-workday review period, the responsible official may assume that the EIS is adequate and may proceed with publication of the EIS. A statement number shall be assigned to the draft EIS by PR prior to publication.

b. For proposed projects that require a prospectus approved by the Public Works Committees of Congress, the draft EIS shall be submitted to PR prior to the submission of the prospectus to Congress. Two copies of the published statement will accompany the prospectus to Congress.

c. The Regional Administrator shall sign the transmittal letters soliciting comments on the draft EIS to EPA, the heads of Federal agencies, the appropriate U.S. Congressman and Senators, the Governor of the State which is affected by the proposed action and the Public Works Committees of Congress. The statement shall be sent to the Washington, D.C. offices of members of Congress. On the same day, the appropriate Regional or Assistant Commissioner shall sign transmittal letters distributing copies of the statement to appropriate local officials, Federal, State, and local agencies, special interest groups and the public for review and comments. In addition, the comments of appropriate State, regional or metropolitan clearinghouses in accordance with the procedures prescribed by the Office of Management and Budget Circular A-95, Revised, shall be solicited unless the Governor of the State involved has designated some other point for obtaining the review. Six copies of the printed statement shall be sent to PR for Central Office distribution.

d. The Environmental Protection Agency (EPA), will publish in the FEDERAL REGISTER lists of environmental impact statements received during the preceding week which are available for public comment. The date establishing the 45-day minimum review period and advance availability of a draft EIS will be calculated from the FEDERAL REGISTER publication date of the notice of availability. Draft EIS's shall be made available to the public without charge to the extent practicable or at a fee which is not more than the cost of reproduction. The draft EIS will also be made available for public review in PBS Central Office and Regional Commissioner's office during normal working hours.

e. Regional Commissioners shall maintain a list of groups, known to be interested in PBS activities. In addition, a list shall be maintained of individuals and groups requesting an opportunity to comment on a project or action. A copy of the draft EIS shall be distributed to the individual or groups expressing an interest in the project or action covered by the statement.

f. Notice of availability of the draft EIS shall be published in one or more local newspapers.

g. Federal agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards shall be asked to comment on draft EIS's. These agencies are listed in appendix II of the CEQ Guidelines. Appendix III of the Guidelines lists offices within Federal and Federal-State agencies that have information regarding the agencies' NEPA activities and receive environmental impact statements on which comments are requested. Draft EIS's shall be submitted for comment to the regional contact points of agencies being consulted when such offices have been established pursuant to section 1500.9(a) of the Guidelines.

h. In implementing the provisions of section 309 of the Clean Air Act, as amended, the responsible official shall submit to the appropriate regional office of EPA for review and comment five copies of all draft EIS's.

12. *Preparation of final environmental impact statements.* The final EIS shall not be prepared until after the site investigation report has been completed. The final EIS must reflect all the site data and substantive comments submitted by other Fedeal agencies, State, and local officials, individuals and groups. Changes and additions to the text of the draft EIS shall be marked by a vertical line in the margin, unless the final EIS differs substantially from the draft EIS. Where opposing professional views and responsible opinions have been overlooked in the draft EIS and are then brought to agency attention the action should be reviewed and a meaningful reference made in the final EIS to opposing views as well as GSA's position on the issues raised. All substantive comments received on the draft EIS (or summaries thereof when comments have been exceptionally voluminous) shall be attached to the final EIS whether or not the comment is considered to merit individual discussion in the text of the statement. Where appropriate, substantive comments on the draft EIS should be correlated to the text of the final EIS by placing a page or section number in the margin of the comment designating where the proper response may be located.

13. *Submission and distribution of final environmental impact statements.* a. The preliminary final EIS shall be submitted to PR for review and comment. The final EIS shall be reviewed in the same manner as the draft EIS (see subpar. 11a).

b. Copies of the final EIS, with comments attached, shall be sent to all Federal, State, and local agencies and private organizations, clearinghouses, and individuals that made substantive comments on the draft statement and to individuals who requested a copy of the final EIS. Copies of the final EIS shall in all cases be sent to the Environmental Protection Agency to assist it in carrying out its responsibilities under section 309 of the Clean Air Act. Where the number of comments on a draft EIS is such that distribution of the final EIS to all commenting entities appears impracticable, the Assistant Commissioner for Space Management (PR) will notify the Office of General Counsel (L) and consult with EPA concerning alternative arrangements for distribution of the statement. Six copies of the printed final EIS shall be sent to PR for Central Office distribution.

14. *Time requirements for review of draft and final environmental impact statements.* a. No administrative action shall be taken sooner than ninety (90) calendar days following publication of notice of availability of the draft EIS in the FEDERAL REGISTER and the date copies have been made available to EPA, public agencies and interested parties. Further, no administrative action shall be taken sooner than 30 calendar days after the publication of notice of availability of the final EIS in the FEDERAL REGISTER and the date copies of the final EIS have been made available to EPA, commenting agencies, and the public. The term "action," as used in this subparagraph, shall mean issuance of a notice to proceed pursuant to a construction or demolition contract, acceptance of offers to sell, vesting of title, issuance of notice to relocate within 90 days in accordance with section 301(5) and the terms of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (84 Stat. 1894), and other such activities. Certain procedures are to be excluded from this prohibition (i.e., continuance of design, contracts for appraisal reports, title evidence and surveys, and negotiations for site acquisition). The determination of whether or not another action is an "action" as used in this subparagraph shall be made by the Commissioner of PBS after seeking advice of the Office of General Counsel.

b. A minimum of 45 calendar days shall be provided for comment on the draft EIS. Commenting periods may be extended an additional 15 days at the discretion of the responsible official. Comments not received within alloted commenting period will not receive response in the text of the final EIS.

c. If the final EIS is filed at least 60 calendar days after the notice of availability of the draft EIS is published by EPA in the FEDERAL REGISTER, the 30- and 90-day periods may run concurrently to the extent that they overlap.

d. When emergency circumstances make it necessary to take a major Federal action which may have a significant environmental impact on the human environment without strictly observing the provisions of the CEQ Guidelines and this order concerning minimum periods for agency review, the Assistant Commissioner for Space Management (PR) shall obtain the concurrence of the Commissioner, PBS (P), and consult with EPA concerning alternative arrangements. Similarly, where there are overriding considerations of expense to the Government or impaired program effectiveness, PR will consult with EPA concerning appropriate modifications of the minimum periods when such action is considered appropriate.

15. *Amendment of draft or final environmental impact statement.* Responsible regional PBS officials shall keep abreast of any substantial changes in the proposed action that may develop or significant new information that becomes available concerning its environmental aspects. These circumstances shall be evaluated to determine whether the draft or final EIS should be supplemented or amended. Supplements or amendments to the statement shall be issued, as appropriate. Notice of the development will be given to the Assistant Commissioner for Space Management (PR). The Assistant Commissioner for Space Management (PR) shall consult with EPA regarding possible recirculation of the statement for the appropriate period.

16. *Responsibility for draft and final environmental impact statement preparation in multi-agency actions.* a. Except as provided in subpar. b, below, when GSA and one or more agencies directly sponsor an action, or are directly involved in a group of actions directly relatd to each other because of functional interdependence and geographical proximity, a "lead agency" shall be designatd to assume supervisory responsibility

for preparation of the EIS. Relevant factors in the determination of the appropriate "lead agency" include the time sequence in which the agencies become involved, the magnitude of agency involvement, and agency expertise with respect to the environmental effects of the actions. Where there is a question regarding the primary responsibility for statement preparation, the matter will be referred to the Assistant Commissioner for Space Management (PR), for consultation with EPA for resolution. However, it is possible for a statement to be submitted jointly by all agencies concerned with the comments being returned to a single designated agency official. If GSA is the "lead agency" and one or more agencies have partial responsibility for the action, the other agencies shall be requested to provide to the appropriate responsible PBS official such information as may be necessary to prepare a suitable and complete environmental impact statement. If another agency is designated to be the "lead agency," the criteria for statement preparation for that agency shall apply.

b. The General Services Administration (GSA) will serve as the lead agency in all projects involving construction of buildings by the Public Buildings Service.

17. *Public hearings.* a. Prior to the distribution of a draft EIS for a project, a determination shall be made by the responsible official regarding whether a public hearing should be held. This determination shall be documented and attached to the draft EIS. The following factors shall be considered in determining whether a public hearing is appropriate:

(1) The magnitude of the proposal in terms of economic costs, geographic area involved, and the uniqueness or size of commitment of resources involved;

(2) The degree of interest in the proposal as indicated by requests from the public and Federal, State and local authorities that a hearing be held;

(3) The complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to the agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved with respect to environmental concerns through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on proposed action.

b. The draft EIS shall be made available to the public at least 15 calendar days prior to the hearing.

c. The notice of public hearing shall be issued no later than 5 workdays after distribution of the draft EIS and shall be published in a local newspaper of general circulation at least 15 calendar days prior to the date of the hearing. The notice shall contain but is not necessarily limited to the following:

(1) The date, time, place and purpose of the hearing;

(2) A description of program, the proposed project and project area;

(3) A declaration that any person or organization desiring to comment on the draft EIS will be given an opportunity to be heard;

(4) The location and times where the draft EIS will be available for review by the public; and

(5) The Federal agency or agencies sponsoring the project.

d. Verbatim transcript of the hearing shall be kept.

e. Where necessary a reasonable time limit may be established for each speaker.

f. A public hearing shall be held after publication of the draft for all Bureau of Prisons projects.

g. A public informational meeting can be held at anytime that such a meeting is demed necessary.

18. *Early notice system.* a. It is necessary to provide timely public notice and understanding of PBS projects and actions that may have an evironmental impact and to obtain the views of interested parties. Therefore, Regional Commissioners (PBS), shall establish an early notice system for informing the public of the decision to prepare a draft EIS on proposed master plan, new construction, leasing and repair and alteration projects. A list shall be maintained of all projects or actions for which environmental impact statements will be prepared, and shall be updated weekly and available for public inspection. Regional Commissioners (PBS), shall submit early warning lists to the Assistant Commissioner for Space Management (PR) for compilation and publication in the FEDERAL REGISTER. Regional lists are to be submitted to PR normally by c.o.b. March 5, June 5, September 5, and December 5 of each year. The reports control symbol PB-123 has been assigned to this report. (See the HB, Preparation of environmental impact assessments and statements (PBS P 1095.4), for format instructions.)

b. If it is decided that an EIS is not necessary for a proposed action (1) which normally would require and EIS as identified in subpar. 6a of this attachment, (2) which is similar to actions for which a significant number of statements have been prepared, (3) which has previously been announced as the subject of a statement, or (4) for which a negative declaration has been made in response to a request from CEQ pursuant to section 1500.11(f) of the Guidelines, the Regional Commissioner shall prepare a publicly available record briefly setting forth the decision and reasons for the declaration. The list of such negative declarations and any evaluations made to support the declaration or which conclude that preparation of a statement is not yet timely shall be made available to the public on request in the same manner as provided for lists of statements under preparation. (See subpar. 17a, above.)

19. *Format requirements.* a. Type draft and final environmental impact statements on white paper with clear black type;

b. The statement number will be assigned in Central Office by the Assistant Commissioner for Space Management (PR), in accordance with PBS Information System procedures.

c. Prepare a summary sheet in accordance with the format prescribed in appendix I of the CEQ Guidelines and attach to the environmental impact statements as the second page; and

d. Prepare a cover sheet for each environmental statement.

NOTE: Detailed information on preparing an EIA and EIS and a sample format are found in PBS P 1095.4.

[FR Doc. 78-36302 Filed 12-28-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF RESEARCH FOUNDATION FOR MENTAL HYGIENE, INC.

Research on Mental Health; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)), all persons, who:

1. are employed by Research Foundation for Mental Hygiene, Inc., New York, New York, and Memphis, Tennessee; and

2. have, in the course of their employment, access to information which would identify individuals who are the subjects of the research on mental health which is assisted by the Department of Health, Education, and Welfare grant numbered R01 MH 32841 titled "The Evaluation and Treatment of Sexual Aggressives"; are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

> Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

This authorization does not authorize employees of Research Foundation for Mental Hygiene, Inc. to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to the Department of Health, Education, and Welfare grant numbered R01 MH 32841. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered R01 MH 32841 which would identify individuals who are subjects of the research conducted under the grant.

Dated: December 5, 1978.

HERBERT PARDES,
Director, National Institute of Mental Health.

Dated: December 8, 1978.

KARST BESTEMAN,
Acting Director, National Institute on Drug Abuse.

Dated: December 14, 1978.

GERALD L. KLERMAN,
Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-36230 Filed 12-28-78; 8:45 am]

[4110-86-M]

Center for Disease Control

MINE HEALTH RESEARCH ADVISORY COMMITTEE (FORMERLY COAL MINE HEALTH RESEARCH ADVISORY COMMITTEE)

Rechartering

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, the Center for Disease Control announces the rechartering by the Secretary, HEW, on December 18, 1978, of the Mine Health Research Advisory Committee.

The Federal Mine Safety and Health Amendments Act of 1977 amended the Coal Mine Health and Safety Act of 1969. The new Act established a single law governing worker safety and health in all mining operations, and mandated appointment of an advisory committee on coal or other mine health research. The Coal Mine Health Research Advisory Committee has been renamed, therefore, and the charter has been modified to include all types of mine health research.

Dated: December 20, 1978.

WILLIAM C. WATSON, Jr.,
Director, Center for Disease Control.

[FR Doc. 78-36229 Filed 12-28-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

A. H. ROBINS CO.

Elanone-V (Lenperone Hydrocholoride) Injection and Tablets Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of new animal drug applications (NADA's) 96-508 and 97-901, which provide for use of Elanone-V injection as a tranquilizer in dogs and cats and Elanone-V tablets as a tranquilizer in dogs. A. H. Robins Co., the sponsor, requested this action.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216) , Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., Research Laboratories, 1211 Sherwood Ave., Richmond, VA 23220, is the sponsor of NADA 96-508 that covers Elanone-V injection intended for use intravenously (0.10 to 0.40 milligram (mg) per pound of body weight) and intramuscularly (0.20 to 0.80 mg per pound of body weight) in dogs and cats as a tranquilizer. Each milliliter of the product contains 5 mg of lenperone hydrochloride. The firm is also the sponsor of NADA 97-901 covering Elanone-V tablets. Each tablet contains 5 mg of lenperone hydrochloride. The tablets are administered orally at 0.25 to 1.0 mg per pound of body weight, every 5 to 8 hours. They are indicated for use on dogs as a tranquilizer. Both NADA's were originally approved on August 20, 1975.

By letter of July 27, 1978, the firm stated that it no longer markets these products and requested withdrawal of approval of the NADA's and waived opportunity for hearing. In a separate document published elsewhere in this issue of the FEDERAL REGISTER, the agency is revoking the regulations for these products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-508 amd 97-901 and all supplements thereto for Elanone-V injection and Elanone-V tablets is hereby withdrawn, effective (December 29, 1978.)

Dated December 19, 1978.

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

[FR Doc. 78-35910 Filed 12-28-78; 8:45 am]

[4110-03-M]

[NADA 13-436]

MENLO PARK LABORATORIES, INC.

Skin Antiseptic and Cleanser; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for the use of Vet Spray Skin Antiseptic and Cleanser on cats, dogs, cows, and horses as a surgical disinfectant and as an antiseptic cleanser. The sponsor, Menlo Park Laboratories, requested this action.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Menlo Park Laboratories, Inc., Menlo Park Center, P.O. Box 305, Edison, NJ 08817, is the sponsor of NADA 13-436, which provides for use of Vet Spray Skin Antiseptic and Cleanser on cats, dogs, cows, and horses as a surgical disinfectant and as an antiseptic cleanser.

By letter of May 8, 1978, the firm requested that approval of NADA 13-436 be withdrawn because the drug is no longer being marketed, and waived opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is hereby given that approval of NADA 13-436 and all supplements thereto is hereby withdrawn, effective December 29, 1978.

Dated: December 19, 1978.

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

[FR Doc. 78-35911 Filed 12-28-78; 8:45 am]

[4110-08-M]

Office of the Secretary

PRIVACY ACT OF 1974

System of Records and Notice of Proposed Routine Uses

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new systems of records, Studies of Possible Influences on Cognitive and Emotional Development of Children, HEW/NIH NICHD, 09-25-0138; International Activities: Scientific Visitors at the National Institutes of Health, HEW/NIH/FIC, 09-25-0140.

SUMMARY: The National Institutes of Health (NIH) is hereby publishing the new systems of records in accordance with the requirements of 5 U.S.C. 552a(e)(4). In accordance with the requirements of 5 U.S.C. 552a(e)(11), the routine uses of these proposed systems are set out for public comment. Interested persons are invited to submit written comments with respect to these routine uses.

DATES: The National Institutes of Health will adopt the routine uses as proposed without further notice January 28, 1979, unless comments are received on or before January 28, 1979, which would result in a contrary determination. NIH has filed a report on proposed new systems of records with the Director, Office of Management and Budget, the Speaker of the House, and President of the Senate on Dec. 22, 1978. Because of the requirements in OMB Circular A-108, however, the systems will not be put into effect until sixty (60) days after this filing date.

ADDRESS: Comments should be addressed to Acting Director, Fair Information Practices Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F, Hubert F. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert J. Slevin, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, Maryland 20014, or call 301-496-2461.

SUPPLEMENTARY INFORMATION: The National Institute of Child Health and Development (NICHD) proposes to study the possible influences on Cognitive and Emotional Development of Children. In order to carry out the appropriate analyses, NICHD must be able to collate data from a wide variety of sources. The only way to do this is to identify the data on each individual with a specific identifier so as to assure absolute correlation of data among the various sources.

NICHD will maintain the records in this sytem in a secure manner compatible with their content and use. Access will be given only to Department employees whose official duties require access for verification, coding and statistical manipulation and evaluation purposes. NICHD will keep records in locked file cabinets or rooms under the direct control of the Principal Investigator.

The Fogarty International Center (FIC) proposes to report an ongoing program for scientific visitors. The system of records is for administrative purposes only.

FIC has collected approximately fifty (50) data items on each applicant which include, among other items, education, work experience, and references.

Because this is an on-going program, FIC performed a risk analysis on the system of records in accordance with Chapter 45-13 of the HEW General Administration Manual.

NIH did not report the system of records earlier because the great majority of individuals involved are aliens and NIH failed to recognize the U.S. citizens involved.

Dated: December 22, 1978.

FREDERICK M. BOHEN,
Assistant Secretary for Management and Budget.

09-25-0138

System name:

Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HEW/NIH/NICHD

Security classification:

None.

System location:

National Institute of Child Health and Human Development Building 31, Room 2B215, 9000 Rockville Pike, Bethesda, Maryland 20014 and NIH Building 12, 9000 Rockville Pike, Bethesda, Maryland 20014.

Categories of individuals covered by the system:

Parents and their children who have specifically agreed to participate in studies of the Social and Behavioral Sciences Branch.

Categories of records in the system:

Psychological tests, observations and parental responses to questionnaires and interviews regarding various apects of the child's development.

Authority for maintenance of the system:

42 U.S.C. 241, 289d.

Routine uses of records maintained in the system, including category of users and the purposes of such uses:

1. 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.

2. Certain infectious diseases are reported to state governments as required by law.

3. To the Department of Justice or other appropriate Federal Agencies in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual. (See Appendix B, Department Regulations, [45 CFR, Part 5b], item 100).

4. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his/her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his/her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, assessing, retaining, and disposing of records in the system:

Storage:

File folders, microfiche, computer tapes and discs.

Retrievability:

Identifier codes and names. HEW uses to determine: (1) prenatal and paranatal correlates of later development; (2) possible environmental influences on later development; (3) stability of development; and (4) possible early predictors of later cognitive and emotional difficulties.

Safeguards:

Data will be kept in secured areas and access limited to authorized personnel (system manager and research staff). Access to computerized data is controlled by the use of identification codes known only to authorized personnel. For computerized records the investigator will comply, where appro-

priate, with Department standards and National Bureau of Standards Guidelines. For example, access is controlled by use of security codes known only to authorized personnel.

Retention and disposal:

One year to five years, depending on the study. Hard copy shredded; computer tapes and discs erased.

System manager(s) and address:

Chief, Social and Behavioral Sciences Branch, National Institute of Child Health and Human Development, Building 31, Room B2B-15, 9000 Rockville Pike, Bethesda, Maryland 20014.

Notification procedure:

To determine if a file exists, write to system manager and provide the following information:

a. *System name:* Studies of Possible Influences in Early Cognitive and Emotional Development carried out by the Social and Behavioral Sciences Branch

b. Complete name at time of study

c. Home address at time the study was undertaken

d. Dates(s) at the time information was provided (if known)

e. Birth date

f. An individual who requests notification of or access to a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6).

g. There are special procedures for requests on a minor's behalf. These procedures are described in full in Department Regulations (45 CFR, Section 5b.6(c)).

Record access procedures:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

Contesting record procedures:

Write to system manager and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations (45 CFR, Part 5b.7).

Record source categories:

Information provided by subjects, family, and clinical investigators.

Systems exempted from certain provisions of the Act:

None.

09-25-0140

System name:

International Activities: Scientific Visitors at the National Institutes of Health, HEW/NIH/FIC

Security classification (if none, so state):

None

System location:

Fogarty International Center, Building 16A, and Division of Computer Research and Technology, Building 12, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Ancillary records are located in laboratories where participants are assigned.

Categories of individuals covered by the system:

Health scientists (mainly foreign but some resident aliens and US citizens) at all levels of their postdoctoral careers who are invited to the National Institutes of Health campus for further training or to conduct research in their biomedical specialties.

Categories of records in the system:

History of fellowship, employment and/or stay at NIH; education and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

Authority for maintenance of the system:

42 U.S.C. 2421.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

1. Information is made available to authorized employees and agents of the US, including the General Accounting Office, for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

2. 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 the individual.

3. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

They are stored in file folders and on file cards, magnetic tape and microfilm.

Retrievability:

By name and country of citizenship. HEW Use: The program was established to facilitate the exchange of ideas among scientists at all levels of their postdoctoral research careers who spend from one to three years in the laboratories of NIH. Biographical information and references are submitted by the prospective participants for use by the review staffs of NIH and other Public Health Service agencies (Food and Drug Administration and Alcohol, Drug Abuse, and Mental Health Administration) which maintain laboratories on the NIH campus. Invitations are extended by the Directors of the Institutes and other PHS agencies.

Safeguards (access controls):

Access limited to authorized personnel (system manager and staff). For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) are used, limiting access to authorized personnel.

Retention and disposal:

Records of successful applicants are retained indefinitely.

System manager(s) and address (Include ZIP Code):

Chief, International Visitors Center, Fogarty International Center, Building 16A, Room 101, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Notification Procedure:

Requests for notification of or access to records should be addressed to the system manager as listed above. Verification of identity is required. This procedure is in accordance with Department Regulations 45 CFR Part 5b.5.

Record access procedures:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulations 45 CFR, Section 5b.5.

Contesting record procedures:

Contact the official under notification procedure above, and reasonably identify the record and specify the information to be contested. These procedures are in accordance with Department Regulations 45 CFR, Section 5b.7.

Record source categories:

Applicants and persons supplying references.

Systems exempted from certain provisions of the act (If none, so state):

None.

[FR Doc. 78-36325 Filed 12-26-78; 2:16 pm]

[4110-35-M]

HOSPITAL INSURANCE MONTHLY PREMIUM

Premium Rate for the Uninsured Aged

Under the authority in Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1979, is $69.

Section 1818 of the Social Security Act provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, by certain uninsured persons age 65 and older who do not otherwise meet the requirements for entitlement to hospital insurance. (Insured persons need pay no hospital insurance premiums.)

Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during the last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the 12-month period beginning with the following July 1. That section also requires that, for the period beginning July 1, 1979, the premium must be $33 multiplied by the ratio of (1) the 1979 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1 or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1979 inpatient hospital deductible was determined to be $160. (See 43 F.R. 44891, September 29, 1978.) The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72 to comply with a ruling of the Cost of Living Council. (See 37 F.R. 21452, October 11, 1972.) The monthly premium for the 12-month period ending June 30, 1980, has been calculated using the $76 deductible for 1973, since this appears to satisfy more closely the intent of the law. Thus the monthly hospital insurance premium is $33×(160/76)=$69.47, which is rounded to $69.

Dated: December 21, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-36119 Filed 12-28-78; 8:45 am]

[4110-35-M]

SUPPLEMENTARY MEDICAL INSURANCE FOR THE AGED AND DISABLED (PART B OF MEDICARE)

Monthly Actuarial Rates and Monthly Premium Rate

Each December, the Secretary of Health, Education, and Welfare is required by law to promulgate two notices relating to the Medicare Supplementary Medical Insurance (SMI) program.

One notice announces two amounts which, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI benefits per aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI per disabled enrollee (under age 65) during the 12 months beginning the following July. These amounts are called "monthly adequate actuarial rates."

The second notice is the monthly SMI premium rate to be paid by the aged and disabled enrollees for the 12 months beginning the following July. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) The premium rate must be the lesser of the adequate actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits (effective the preceding June). The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The notices of these announcements for the period July 1, 1979, through June 30, 1980, are as follows:

NOTICE OF MONTHLY ADEQUATE ACTUARIAL RATES

As required by sections 1839(c)(1) and (4) of the Social Security Act (42 U.S.C. 1395r(c)(1) and (4)), as amended, I hereby determine that the monthly adequate actuarial rates applicable for the 12-month period beginning July 1, 1979, are $13.40 for enrollees age 65 and over, and $25.00 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

NOTICE OF MONTHLY PREMIUM RATE

Under the authority granted by law, I have determined and hereby announce that the basic premium amount required by section 1839(c)(3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), as amended, will be $8.70 monthly during the period beginning July 1, 1979, and ending June 30, 1980.

STATEMENT OF ACTUARIAL ASSUMPTIONS AND BASES EMPLOYED IN DETERMINING THE MONTHLY ADEQUATE ACTUARIAL RATES AND THE STANDARD MONTHLY PREMIUM RATE FOR THE SUPPLEMENTARY MEDICAL INSURANCE PROGRAM BEGINNING JULY 1979

1. ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

The law requires that the Supplementary Medical Insurance (SMI) program be financed on an incurred basis. That is, program income during the 12-month period for which the adequate actuarial rates are effective must be sufficient to pay for services rendered during that period (plus the Government's related administrative costs) even though payment for some of these services will not be made until after the close of the period. The portion of income required to cover benefits not paid until after the close of the 12-month period is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the adequate rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level which is adequate to cover the impact of a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of June 30 for each of the years 1977-79.

TABLE I--ACTUARIAL STATUS OF THE SMI TRUST FUND
YEARS ENDING JUNE 30 OF 1977-79
(In Millions)

Year ending June 30	Assets	Liabilities	Assets less liabilities
1977	$2,258	$1,763	$ 495
1978	3,824	2,237	1,587
1979	4,782	2,565	2,217

2. MONTHLY ADEQUATE ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OLDER

The monthly adequate actuarial rate is one-half the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for the following: interest earnings on assets in the trust fund; contingency margin; and amortization of unfunded liabilities.

The monthly adequate actuarial rate for enrollees age 65 and older for the year ending June 30, 1980, was determined by projecting per enrollee cost for the 12-month period ending June 30, 1977, by type of service. The projected costs for the years ending June 30 of 1977-80 are shown in Table 2. The values for the 12-month period ending June 30, 1977, were established from program data. Subsequent years were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 3.

[4110-35-C]

TABLE 2--DERIVATION OF PROMULGATED MONTHLY RATE FOR ENROLLEES AGE 65 AND OVER YEARS ENDING JUNE 30 OF 1977-80

	1977	1978	1979	1980
Covered services (at level recognized):				
Physicians' reasonable charges	$9.99	$11.37	$12.65	$13.99
Radiology and pathology	.51	.59	.67	.78
Outpatient hospital and other institutions	1.72	1.95	2.28	2.64
Home health agencies	.31	.35	.40	.47
Group practice plans	.24	.30	.34	.39
Independent lab	.14	.17	.19	.22
Total services	12.91	14.73	16.53	18.49
Cost sharing:				
Deductible	-1.73	-1.76	-1.78	-1.80
Coinsurance	-2.08	-2.41	-2.73	-3.08
Total benefits	9.10	10.56	12.02	13.61
Administrative expenses	.79	.76	.94	1.02
Incurred expenditures	9.89	11.32	12.96	14.63
Value of interest on fund	-.09	-.20	-.27	-.29
Margin for contingencies and to amortize unfunded liabilities	.90	1.18	.71	-.94
Promulgated monthly rate	10.70	12.30	13.40	13.40

TABLE 3--PROJECTION FACTORS
YEARS ENDING JUNE 30 OF 1978-1980
(In percent)

	1978	1979	1980
Physicians' services:			
Fees[1]	9.5	7.9	7.5
Utilization[2]	4.0	3.0	3.0
Outpatient hospital services per enrollee[3]	12.0	15.0	15.0
Home health agency services per enrollee[3]	15.0	15.0	15.0
Group practice plan services per enrollee[3]	25.0	15.0	15.0
Other services per enrollee	15.0	15.0	15.0

1/ As recognized for payment under the program.

2/ Increase in the number of services received per enrollee and greater relative use of more expensive services.

3/ The values for 1978 and/or 1979 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for the year ending June 30, 1980, is $14.63. The monthly adequate actuarial rate of $13.40 provides an adjustment for interest earnings and a small margin for contingencies.

3. MONTHLY ADEQUATE ACTUARIAL RATE FOR DISABLED ENROLLEES

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 consecutive months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projections for the aged, using the same actuarial assumptions. Costs for the end-stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for the year ending June 30, 1980, is $26.47. The monthly adequate actuarial rate of $25.00 provides an adjustment for interest earnings and a small margin for contingencies.

[4110-35-C]

TABLE 4--DERIVATION OF PROMULGATED MONTHLY RATE FOR DISABLED ENROLLEES YEARS ENDING JUNE 30 OF 1977-80

	1977	1978	1979	1980
Covered services (at level recognized):				
Physicians' reasonable charges	$11.16	$12.78	$14.28	$15.80
Radiology and pathology	.53	.61	.70	.81
Outpatient hospital and other institutions	9.73	11.38	13.18	14.75
Home health agencies	.22	.25	.29	.33
Group practice plans	.17	.21	.24	.28
Independent lab	.11	.12	.14	.16
Total services	21.92	25.35	28.83	32.13
Cost sharing:				
Deductible	-1.59	-1.62	-1.64	-1.65
Coinsurance	-3.92	-4.58	-5.23	-5.85
Total benefits	16.41	19.15	21.96	24.63
Administrative expenses	1.41	1.38	1.73	1.84
Incurred expenditures	17.82	20.53	23.69	26.47
Value of interest on fund[1]	-1.61	-1.96	-2.11	-2.21
Margin for contingencies and to amortize unfunded liabilities	2.79	6.43	3.42	.74
Promulgated monthly rate	19.00	25.00	25.00	25.00

1/ The values for 1977, 1978, and 1979 differ substantially from last year's promulgation notice due to refinements in the methodology for determining interest for disabled enrollees.

4. SENSITIVITY TESTING

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy under alternate assumption of the rates promulgated here. The most unpredictable factors which contribute significantly to future costs are outpatient hospital costs, physician utilization (measured indirectly and reflecting the use of more visits per enrollee, the use of more expensive services, and other factors not explained by simple price per service increases), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. All assumptions not shown in Table 5 are the same as in Table 3.

Table 5 indicates that, under the assumptions used in preparing this report, the promulgated monthy rates will result in an excess of assets over liabilities of $1,737 million by the end of June 1980. This amounts to 14.7 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic produce an excess of assets over liabilities of $206 million by the end of June 1980, which amounts to 1.5 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the promulgated monthly rates will result in an excess of assets over liabilities of $2,777 million, which amounts to 26.1 percent of the estimated total incurred expenditures for the following year.

TABLE 5--PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS YEARS ENDING JUNE 30 OF 1979-80

	This projection		Low assumption		High assumption	
	1979	1980	1979	1980	1979	1980
Projection factors (in percent):						
Physicians' fees[1]	7.9	7.5	6.9	6.5	9.4	9.0
Utilization of physicians' services[2]	3.0	3.0	1.0	1.0	5.5	5.5
Outpatient hospital services per enrollee[3]	15.0	15.0	5.0	5.0	30.0	30.0
Home health agency services per enrollee[3]	15.0	15.0	5.0	5.0	30.0	30.0
Actuarial status (in millions):						
Assets	$4,782	$4,655	$5,022	$5,521	$4,444	$3,386
Liabilities	2,565	2,918	2,491	2,744	2,671	3,180
Assets less liabilities	2,217	1,737	2,531	2,777	1,773	206
Ratio of assets less liabilities to expenditures (in percent)[4]	21.6	14.7	26.4	26.1	15.7	1.5

1/ As recognized for payment under the program.

2/ Increase in the number of services received per enrollee and greater relative use of more expensive services.

3/ The values for 1979 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.

4/ Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

5. STANDARD PREMIUM RATE

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

1. The adequate actuarial rate for enrollees age 65 and older; or

2. The current standard monthly premium, increased by the same percentage that the level of old-age survivors, and disability insurance (OASDI) benefits has been increased since the May preceding the promulgation (and rounded to the nearer dime).

The standard monthly premium rate for the 12-month period ending with June 30, 1979, is $8.20. The OASDI benefit table was increased 6.5 percent in June 1978. The $8.20 rate, increased by 6.5 percent and rounded to the nearer ten cent multiple, is $8.70. Since this is less than the adequate actuarial rate, the standard premium rate is $8.70 for the 12 months ending with June 1980.

Dated: December 21, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc. 78-36120 Filed 12-28-78; 8:45 am]

[4110-12-M]

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 Wednesday, January 17, 1979, 1:30 p.m. to 5:00 p.m., at the Disabled American Veterans Building, First Floor Conference Room, 807 Main Avenue, S.W., Washington, D.C.; Thursday, January 18, 1979, 9:00 a.m. to 5:00 p.m., Conference Room 425A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.; and on Friday, January 19, 1979, Conference Room 800 of the Hubert H. Humphrey Building. 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. A translator for the Deaf will be available upon advanced request.

Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, Room 2614, ROB No. 3, 7th and D Streets, S.W., Washington, D.C. 20201, telephone: (202) 245-7634.

Dated: December 15, 1978.

FRED J. KRAUSE,
Executive Director, President's Committee on Mental Retardation.

[FR Doc. 78-36359 Filed 12-28-78; 8:45 am]

[4110-07-M]

TABLE OF AVERAGE TOTAL WAGES YEAR BY YEAR

Average Total Wages for the Years 1951-1977 for Adjusting Actual Earnings for Use in Computing Social Security Benefits

I hereby determine and announce the average of total wages for each calendar year 1951 through 1977 which will be used for computing social security benefits under sections 215(a) and (b) of the Social Security Act (42 U.S.C. 415(a) and (b)). The average of the total wages for each of those years is as follows:

Calendar year	*average of the total wages*
1951	$2,799.16
1952	2,973.32
1953	3,139.44
1954	3,155.64
1955	3,301.44
1956	3,532.36
1957	3,641.72
1958	3,673.80
1959	3,855.80
1960	4,007.12
1961	4,086.76
1962	4,291.40
1963	4,396.64
1964	4,576.32
1965	4,658.72
1966	4,938.36
1967	5,213.44
1968	5,571.76
1969	5,893.76
1970	6,186.24
1971	6,497.08
1972	7,133.80
1973	7,580.16
1974	8,030.76
1975	8,630.92
1976	9,226.48
1977	9,779.44

We are publishing these average wages as required by section 215(a)(1)(D) of the Social Security Act as amended by the Social Security Amendments of 1977 (Pub. L. 95-216, enacted December 20, 1977).

BACKGROUND AND PURPOSE

The Social Security Amendments of 1977 provided a new way to compute social security benefits. We are publishing a detailed explanation of the new computation method and the reasons for the change in an interim regulation amending Subpart C of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations that appears elsewhere in this issue of the FEDERAL REGISTER.

Briefly, the changes involve the way benefit amounts are computed for workers who reach age 62 after 1978. The new method is intended to stabilize the relationship between benefit levels and earnings before retirement for persons who become eligible for benefits in the future. Under the benefit computation methods in the law before the 1977 amendments, the relationship between future benefit levels and preretirement earnings was unpredictable, depending on future increases in the cost of living and in average wage levels. Based on reasonable assumptions regarding future increases in the cost of living and in average wage levels, benefit levels were projected to increase faster than wage levels under the provisions in the old law. Thus, the new computation method provided in the 1977 amendments substantially improves the long-range financial condition of the Social Security Trust Funds.

The new computation methods include a new way of compensating for inflation's effects on earnings levels that occurred before a person becomes entitled to benefits. The compensation is to adjust or "index" the worker's past earnings in proportion to the changes in the country's average wage levels that have occurred during his working years. To make this adjustment, it was necessary to determine the average wages of all workers ("average of the total wages") in each calendar year from 1951 on. (The new computation method counts only those years. Under the amendments we still use an older method that also counts earnings in earlier years if that gives higher benefits, but none of the earnings will be indexed.) Section 215(a)(1)(D), as amended, directed us to do so and to publish those figures; those are the "average of the total wages" figures listed above.

HOW WE FIGURED THE AVERAGE TOTAL WAGES

The interim regulation mentioned above explains how we determined the average total wages. Briefly, for years after 1977, they are the total wages earned in each year, divided by the total number of individuals who earned them. These totals will be obtained from data on W-2 forms submitted to the Internal Revenue Service for income tax purposes. Any individual who works for wages in more than one job is counted as only one worker.

For years before 1978, we determined average wages from data on wages earned during the first quarter of the year and reported to SSA for social security tax purposes. We multiplied the average wage for the first quarter by four to obtain the average wage for the year. We did this rather than use the total wages reported for the year because many wage earners reach the ceiling for reported taxable earnings before the end of the year, while relatively few reach it in the first quarter.

For 1973-1977, we determined average wages from data collected on all taxable wages reported to SSA for the first quarter of the year. For years prior to 1973, we used a statistical sample of such data, because data on average taxable wages reported for all employees are not available on a 100-percent basis before 1973. For 1951-1956, the size of the sample was 0.1 percent. For 1957-1972, the sample was 1 percent.

Section 215(a)(1)(D) of the Act requires the publication of the average total wages determined for years 1951-1978 by November 1, 1979. We are publishing the figures for 1951-1977 now because they will be used to compute benefits for a large number of beneficiaries as of January 1979 and because many corporations base benefits payable under their pension programs on benefits payable under social security. These figures are based on the definition of average total wages proposed in the interim regulation referred to earlier.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry C. Ballantyne, Acting Deputy Chief Actuary, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2466.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; and 13.805, Social Security—Survivors Insurance.)

Dated: December 16, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

[FR Doc. 78-36345 Filed 12-28-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-78-906]

URBAN DEVELOPMENT ACTION GRANTS

Revised Minimum Standards for Physical and Economic Distress for Metropolitan Cities and Urban Counties

AGENCY: Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: The Department is providing Notice of the most current minimum standards of physical and economic distress for metropolitan cities, other cities over 50,000 population, and urban counties for the Urban Development Action Grant program. This Notice is required by 24 CFR 570.452(b)(1)(i). We are also providing a listing of those metropolitan cities, other cities over 50,000 population and urban counties which meet the standards of minimum physical and economic distress, following the change in data from the 1976 to the 1977 average yearly rate of unemployment compiled by the Bureau of Labor Statistics.

FOR FURTHER INFORMATION CONTACT:

Sarah Underwood, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202/755-6540.

SUPPLEMENTARY INFORMATION: On October 30, 1978 (43 FR 50668), the Department published interim regulations deleting specific reference to the minimum standards of physical and economic distress for fiscal year 1978. Section 570.452 was amended to require that HUD issue in notice form the minimum threshold for each category of distress from time to time. This notice accommodates that requirement.

Furthermore, the standard for average yearly unemployment has been changed from 7.69 percent or greater to 6.98 or greater. This is a result of a recent national update of average yearly unemployment for 1977 compiled by the Bureau of Labor Statistics. A list of metropolitan cities, other cities over 50,000, and urban counties which meet the minimum standards of distress is provided.

The following notice is published pursuant to Section 570.452(b)(1)(i) (43 FR 50668):

I. The most current minimum standards of physical and economic distress are:

(A) *Age of housing.* 34.15 percent of the applicant's year-round housing units were constructed prior to 1940, based on U.S. Census data;

(B) *Per capita income.* The net increase in per capita income for the period 1969-1974 was $1,424 or less, based on U.S. Census data;

(C) *Population lag/decline.* For the period 1960-1975 the percentage rate of population growth (based on corporate boundaries in 1960 and corporate boundaries in 1975) was 15.52 or less, based on U.S. Census data;

(D) *Unemployment.* The average yearly rate of unemployment for 1977 was 6.98 percent or greater, based on August, 1978 data compiled by the Bureau of Labor Statistics;

(E) *Job lag/decline.* The rate of growth in retail and manufacturing employment for the period 1967-1972 was 7.08 percent or less, based on U.S. Census data. If data is not available for both retail and manufacturing employment, the threshold will be the median (based on those cities for which both sets of data are available) for either retail employment or manufacturing employment;

(F) *Poverty* 11.24 percent or more of persons within the applicant's jurisdiction are at or below the poverty level, based on 1970 U.S. Census data;

II. The following cities have met the current mimimum standards of physical and economic distress:

ALABAMA

Anniston	Mobile
Birmingham	Montgomery
Florence*	Tuscaloosa
Gadsden	

ARKANSAS

North Little Rock	Texarkana
Pine Bluff	

CALIFORNIA

Alhambra	Ontario
Bakersfield	Pasadena
Berkeley	Pico Rivera
Burbank	Pomona
Chula Vista	Richmond
Compton	Riverside
El Monte	Sacramento
Fresno	San Bernadino
Glendale	San Francisco
Inglewood	Santa Barbara
Lompoc	Santa Cruz
Long Beach	Santa Monica
Los Angeles	Seaside
Norwalk	South Gate
Oakland	Stockton

COLORADO

Denver	Pueblo

CONNECTICUT

Bridgeport	New London
Hartford	Norwalk
Meriden	Norwich
New Britain	Waterbury
New Haven	West Haven

DELAWARE

Wilmington

DISTRICT OF COLUMBIA

Washington

FLORIDA

Bradenton
Cocoa
Daytona Beach
Fort Myers
Melbourne
Miami*
Miami Beach
Panama City
Pensacola
Tampa
West Palm Beach

GEORGIA

Albany*
Atlanta
Augusta
Macon
Savannah

ILLINOIS

Champaign
Chicago
Cicero
Decatur
East St. Louis
Joliet
Kankakee
Moline
Peoria
Rantoul
Rockford
Rock Island
Urbana

INDIANA

Anderson
Bloomington
East Chicago
Evansville
Fort Wayne
Gary
Hammond
Kokomo
Lafayette
Muncie
South Bend
Terre Haute
West Lafayette

IOWA

Council Bluffs
Davenport
Sioux City
Waterloo

KANSAS

Kansas City
Lawrence
Wichita

KENTUCKY

Ashland
Covington
Hopkinsville
Louisville
Owensboro

LOUISIANA

Alexandria
Lafayette*
Lake Charles
Monroe*
New Orleans
Shreveport

MAINE

Auburn
Lewiston
Portland

MARYLAND

Baltimore

MASSACHUSETTS

Boston
Brockton
Brookline
Cambridge
Chicopee
Fall River
Fichburg
Haverhill
Holyoke
Lawrence
Leominster
Lowell
Lynn
Malden
Medford
New Bedford
Pittsfield
Quincy
Somerville
Springfield
Waltham
Worchester

MICHIGAN

Battle Creek
Bay City
Dearborn
Detroit
East Lansing
Flint
Grand Rapids
Jackson
Kalamazoo
Lansing
Muskegon
Muskegon Heights
Pontiac
Saginaw

MINNESOTA

Duluth
Minneapolis
St. Cloud
St. Paul

MISSISSIPPI

Biloxi
Gulfport
Jackson*
Moss Point*

MISSOURI

Kansas City
St. Joseph
St. Louis
Springfield

MONTANA

Great Falls

NEW HAMPSHIRE

Manchester
Nashua

NEW JERSEY

Asbury Park
Atlantic
Bayonne
Bloomfield
Bridgeton
Camden
Clifton
East Orange
Elizabeth
Irvington
Jersey City
Long Branch
Millville
Newark
New Brunswick
Passaic
Paterson
Perth Amboy
Trenton
Union City
Vineland

NEW YORK

Albany
Binghamton
Buffalo
Elmira
Mount Vernon
New Rochelle
New York
Niagara Falls
Poughkeepsie
Rochester
Rome
Schenectady
Syracuse
Tonawanda Town
Troy
Union Town
Utica
White Plains
Yonkers

NORTH CAROLINA

Asheville
Durham*
High Point
Wilmington

OHIO

Akron
Canton
Cincinnati
Cleveland
Cleveland Heights
Columbus
Dayton
Elyria
Hamilton City
Lakewood
Lima
Mansfield
Marietta
Middletown
Springfield
Steubenville
Toledo
Warren
Youngstown

OREGON

Portland

PENNSYLVANIA

Allentown
Altoona
Bethlehem
Chester
Easton
Erie
Harrisburg
Hazleton
Johnstown
Lancaster
Philadelphia
Pittsburg
Reading
Scranton
Upper Darby
Wilkes-Barre
Williamsport
York

RHODE ISLAND

Pawtucket
Providence

SOUTH CAROLINA

Charleston
Columbia
Greenville
North Charleston
Spartanburg

SOUTH DAKOTA

Sioux Falls

TENNESSEE

Bristol
Chattanooga
Clarksville
Johnson City
Knoxville

TEXAS

Abilene
Beaumont*
Brownsville
Bryan*
Corpus Christi*
Denison
Edinburg
El Paso
Forth Worth
Galveston
Harlingen
Killeen
Laredo
McAllen
Odessa
Orange
Pharr
Port Arthur
San Angelo
San Antonio
San Benito
Sherman
Texarkana
Waco
Wichita Falls

UTAH

Ogden
Provo*
Salt Lake City

VIRGINIA

Lynchburg
Norfolk
Petersburg
Portsmouth
Richmond
Roanoke

WASHINGTON

Everett
Seattle
Spokane
Tacoma
Yakima

WEST VIRGINIA

Charleston
Huntington
Parkersburg
Wheeling

WISCONSIN

Kenosha
La Crosse
Madison
Milwaukee
Oshkosh
Racine
Superior

PUERTO RICO

Toa Baja Municipio
Bayamaon Municipio
Caguas Municipio
Carolina Municipio
Guaynabo Municipio
Mayaguez Municipio
Ponce Municipio
San Juan Municipio

*Requires a unique distress factor to qualify on the basis of minimum physical and economic distress.

III. The following urban counties have met the current minimum standards of physical and economic distress.

Fresno, California*
Kern, California
Riverside, California
Polk, Florida
Madison, Illinois
Hudson, New Jersey
Beaver, Pennsylvania
Luzerne, Pennsylvania
Washington, Pennsylvania
Westmoreland, Pennsylvania
York, Pennsylvania

*Requires a unique distress factor to qualify on the basis of minimum physical and economic distress.

Issued at Washington, D.C., December 26, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-36346 Filed 12-28-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 5461]

CALIFORNIA

Application

DECEMBER 13, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Beacon Oil Company of Hanford, California has filed a right-of-way application, CA 5461, for an existing 6" pipeline for the purpose of transporting crude oil across the following described lands:

MOUNT DIABLO MERIDIAN

T. 20 S., R. 15 E.,
Sec. 2, SW¼, SW¼SE¼;
Sec. 12, N½NE¼.

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 undersigned at E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 78-36231 Filed 12-28-78; 8:45 am]

[4310-84-M]

[NM 35505, 35506]

NEW MEXICO

Applications

DECEMBER 19, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 8 W.,
Sec. 34, W½SW¼.
T. 25 N., R. 11 W.,
Sec. 22, NE¼NW¼.

These pipelines will convey natural gas across 0.226 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36257 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Wyoming 65823]

WYOMING

Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 20 N., R. 93 W.,
Sec. 26, S½SW¼ and SW¼SE¼;
Sec. 36, S½NW¼, NE¼SW¼, NW¼SE¼ and S½SE¼.

The pipeline with related facilities will transport natural gas produced from the Federal #1-26 gas well, located in the SW¼SW¼ of sec. 26, to a point of connection with Colorado Interstate Gas Company's existing pipeline located in the SE¼SE¼ sec. 36, T. 20 N., R. 93 W., 6th P.M., in 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, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36260 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Wyoming 65915]

WYOMING

Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct a 4½ inch pipeline and related anode facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 94 W.,
Sec. 4, S½NW¼.

The pipeline with appurtenant anode facilities will transport natural gas produced from the Siberia Ridge 7-A Well located in the SE¼NW¼ of sec. 5, to a point of connection with Cities Service Gas Company's existing pipeline in the SE¼NW¼ of sec. 4, in T. 21 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, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36261 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Buffalo 041392 Amendment]

WYOMING

Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Marathon Pipe Line Company of Casper, Wyoming filed an application to amend their existing right-of-way B-041392 to install a rectifier, deep-well ground bed and related facilities for the maintenance of their existing 6 inch pipeline across the following described lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 51 N., R. 93 W.,
Sec. 24, SW¼SE¼.

These facilities are required for the operation and maintenance of Marathon Pipe Line Company's existing 6 inch pipeline in T. 51 N., R. 93 W., in Big Horn 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, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36262 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Wyoming 65826]

WYOMING

Application

DECEMBER 20, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah 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. 20 N., R. 112 W.,
Sec. 34, N½S½.

The pipeline will transport natural gas produced from the Fabian Ditch #134 Well located in the N½SW¼ of sec. 34, T. 20 N., R. 112 W., Lincoln County to a point of connection with Northwest Pipeline Corporation's existing pipeline in sec. 35, T. 20 N., R. 112 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, Highway 187 N., P. O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36263 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Wyoming 65824]

WYOMING

DECEMBER 19, 1978.

Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 19 N., R. 92 W.,
Sec. 6, lots 6 and 7.

The pipeline with related facilities will transport natural gas produced from the Fair Federal No. 1-6 Well located in lot 7 of sec. 6, T. 19 N., R. 92 W., to a point of connection with Colorado Interstate Gas Company's existing pipeline in sec. 1, T. 19 N., R. 93 W., all within Carbon 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, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and and Minerals Operations.

[FR Doc. 36234 Filed 12-28-78; 8:45 am]

[4310-84-M]

[Wyoming 65827]

WYOMING

Application

DECEMBER 18, 1978

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah 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. 12 N., R. 119 W.,
Sec. 14, E½SE¼.

The pipeline will transport natural gas produced from the UPRR No. 1 Well located in the SW¼SW¼ of sec. 13 to a point of connection with Mountain Fuel's existing pipeline in the SE¼SE¼ of sec. 11, T. 12 N., R. 119 W., in Uinta 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, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36235 Filed 12-28-78; 8:45 am]

[4310-84-M]

BUTTE DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given, in accordance with Pub. L. 94-579, that a meeting of the Butte District Grazing Advisory Board will be held on Thursday, February 8, 1979.

The meeting will begin at 9 a.m. in the meeting room of the Capri Motel, 220 North Wyoming Street, Butte, Montana.

The agenda for the meeting will include:

(1) A discussion of the function and constraints of grazing advisory boards;
(2) Election of officers;
(3) A review of the District's allotment management plans (AMP's) as they relate to the expenditure of range betterment funds;
(4) A review of current progress on the District's range environmental statements;
(5) Public comments;
(6) Arrangements for the next meeting.

This is the first meeting of the board, which shall serve to offer advice and make recommendations regarding commercial livestock grazing in the development of allotment management plans and the utilization of range betterment funds within the Butte District.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 308, Butte, Montana 59701 by February 6, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: December 19, 1978.

GERALD L. QUINN,
Acting District Manager.

[FR Doc. 78-36233 Filed 12-28-78; 8:45 am]

[4310-84-M]

ROCK SPRINGS DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Rock Springs District Grazing Advisory Board will be held on February 1, 1979.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management office on Highway 187 North, Rock Springs, Wyoming.

The agenda for the meeting will include:

(1) Review and discussion of Allotment Management Plans (AMPs) for the Sandy Grazing Environmental Statement Area
(2) A reading of written statements and public comment period.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, Highway 187 North, P. O. Box 1869, Rock Springs, Wyoming 82901 by January 29, 1979.

Depending on the number of persons wishing to make oral statement, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

JERRY K. OSTROM,
Assistant District Manager,
Rock Springs District.

[FR Doc. 78-36264 Filed 12-28-78; 8:45 am]

[4310-84-M]

UTAH; GRAZING MANAGEMENT

Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Vernal District Grazing Advisory Board will be held on February 9, 1979.

The meeting will begin at 10:30 a.m. in the conference room of the Bureau of Land Management office, 170 South 5th East; Vernal, Utah.

The agenda for the meeting will include:

(1) Organization of the Board
(2) A discussion of duties and functions of the Board
(3) The expenditure of range betterment funds for range improvements
(4) A discussion of the relationships of the Vernal Taylor Grazing Committee with the Board
(5) A review of current policy and programs relating to allotment management plans including the on-going and future grazing environmental statement effort
(6) Discussion of the Board's future involvement with the allotment management program
(7) A discussion of the Public Rangelands Improvement Act of 1978
(8) The arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager; Bureau of Land Management; P.O. Box F; Vernal, Utah, by February 2, 1979. Depending on the number of persons wishing to make oral statements, the District Manager may establish a per person time limit.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Date Signed: December 20, 1978.

LLOYD H. FERGUSON,
District Manager.

[FR Doc. 78-36258 Filed 12-28-78; 8:45 am]

[4310-84-M]

IDAHO WILDERNESS INVENTORY

Proposed Decision

Notice is hereby given that the Bureau of Land Management has completed the first phase of wilderness inventories on certain public lands in Idaho. The inventories, following guidelines established by the Bureau, were conducted in advance of the statewide inventory in order to meet time commitments previously established for two proposed pipeline projects, the Northern Tier Pipeline and the Western Leg of the Alaska Natural Gas Transportation System, both crossing Idaho through the Coeur d'Alene District.

The proposed initial decision is that lands in Idaho crossed by the pipeline projects, with the exception of two RARE II areas previously identified by the U. S. Forest Service, clearly and obviously do not meet the criteria for identification as Wilderness Study Areas. The basis for this decision is that the lands do not meet the wilderness size requirements, as stated in the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Public comments on this proposed decision are being sought during a 60-day public review period beginning on December 20, 1978. An informal open house will be held January 10 and 11 at the BLM Coeur d'Alene District Office to provide an opportunity for public discussion and review of the proposed decision. Interested persons may contact the District by telephone if they wish to visit after regular working hours. The comment period will conclude on February 19, 1979.

To Submit comments or obtain additional information, contact:

William L. Mathews, State Director, Idaho State Office—BLM, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724, Telephone: 208-384-1401.
Martin J. Zimmer, District Manager, Coeur d'Alene District Office—BLM, P. O. Box 1889, Coeur d'Alene, Idaho 83814, Telephone: 208-667-2561.

Dated: December 19, 1978.

T. G. BINGHAM
Acting Idaho State Director,
Bureau of Land Management.

[FR Doc. 78-36232 Filed 12-28-78; 8:45 am]

[4310-84-M]

UTAH

Wilderness Aspects; Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public comment period.

SUMMARY: Notice is hereby given that the public comment period deadline has been extended from December 18, 1978, as published August 23, 1978 (43FR37494) to February 16, 1979. This extension will allow the public more time to comment on the wilderness aspects of roadless areas of 5,000 acres or more that would be crossed by proposed electrical transmission, railroad and pipeline routes for the proposed Intermountain Power Project.

Date Signed: December 22, 1978.

WILLIAM G. LEAVELL,
Associate State Director.

[FR Doc. 78-36259 Filed 12-28-78; 8:45 am]

[4310-84-M]

Bureau of Land Management

CAMPBELL AND CONVERSE MANAGEMENT FRAMEWORK PLANS

Intent

DECEMBER 22, 1978.

This notice is to advise you that the Casper, Wyoming District Office, Bureau of Land Management, is proceeding to review and supplement portions of the Campbell and Converse Management Framework Plans (MFPs) to make certain that the MFPs reflect, as completely as possible, existing statutory requirements and policies and to begin to carry out the requirements of the Federal Lands Review manadated by Section (522)(C) of the Surface Mining Control and Reclamation Act (SMCRA).

Background, standards and procedures for this MFP review and supplement preparation are contained in FEDERAL REGISTER Notice 43 FR 57662-57670 of December 8, 1978. The standards for this review are also discussed in a draft environmental statement, describing the Secretary of Interior's proposed coal program and alternatives, which was released for review on December 15, 1978 (43 FR 58776-58778).

Comments on revisions in the unsuitability criteria, through the environmental statement process as well as through participation in the MFP review process, are welcome.

For further information on the areas being reviewed, please contact: District Manager, Bureau of Land Management, 951 Union Boulevard, Casper, Wyoming 82601, (307) 265-5550 Ext. 5101.

DANIEL P. BAKER,
State Director.

[FR Doc. 78-36305 Filed 12-28-78; 8:45 am]

[4310-84-M]

HANNA AND OVERLAND MANAGEMENT FRAMEWORK PLANS

Intent

DECEMBER 22, 1978.

This notice is to advise you that the Rawlins, Wyoming District Office, Bureau of Land Management, is proceeding to review and supplement portions of the Hanna and Overland Management Framework Plans (MFPs) to make certain that the MFPs reflect, as completely as possible, existing statutory requirements and policies and to begin to carry out the requirements of the Federal Lands Review mandated by Section (522)(C) of the Surface Mining Control and Reclamation Act (SMCRA).

Background, standards and procedures for this MFP review and supplement preparation are contained in FEDERAL REGISTER Notice 43 FR 57662-57670 of December 8, 1978. The standards for this review are also discussed in a draft environmental statement, describing the Secretary of Interior's proposed coal program and alternatives, which was released for review on December 15, 1978 (43 FR 58776-58778).

Comments on revisions in the unsuitability criteria, through the environmental statement process as well as through participation in the MFP review process, are welcome.

For further information on the areas being reviewed, please contact: District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

DANIEL P. BAKER,
State Director,

[FR Doc. 78-36306 Filed 12-28-78; 8:45 am]

[4310-84-M]

IDAHO

Wilderness Inventory

Notice is hereby given that the Bureau of Land Management is conducting a statewide wilderness inventory of the public lands in Idaho.

The first step in this inventory process is to identify the public lands that clearly and obviously do not meet the criteria for identification as wilderness study areas, and those lands that may possibly meet the criteria and should receive more intensive inventory.

The inventory is being conducted according to the procedures outlined in the Bureau's Wilderness Inventory Handbook. The public is invited to participate in this initial inventory phase. As proposed decisions are developed, they will be announced in a subsequent notice and public meetings/workshops will be held.

Further information or copies of the Wilderness Inventory Handbook are available from the Idaho State and District Offices of the BLM.

Addresses: Bureau of Land Management, Idaho State Office, Box 042, Federal Building, Boise, Idaho 83724; Bureau of Land Management, Boise District, 230 Collins Road, Boise, Idaho 83702; Bureau of Land Management, Burley District, Route 3, Box 1, Burley, Idaho 83318; Bureau of Land Management, Idaho Falls District, 940 Lincoln Road, Idaho Falls, Idaho 83401; Bureau of Land Management, Salmon District, P.O. Box 430, Salmon, Idaho 83467; Bureau of Land Management, Shoshone District, P.O. Box 2-B, Shoshone, idaho 83352; Bureau of Land Management, Coeur d'Alene District, P.O. Box 1889, Coeur d'Alene, Idaho 83814.

Dated: December 22, 1978.

WILLIAM L. MATHEWS,
Idaho State Director,
Bureau of Land Management.

[FR Doc. 78-36303 Filed 12-28-78; 8:45 am]

[4310-84-M]

[NM 35484]

NEW MEXICO

Application

DECEMBER 20, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northern Natural Gas Company has applied for one 12¾-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 21 E.,
Sec. 13, N½N½ and SW¼NW¼;
Sec. 14, S½NE¼, N½SW¼ and NW¼SE¼;
Sec. 15, SE¼SW¼, E½SE¼ and SW¼SE¼;
Sec. 20, NE¼NE¼;
Sec. 21, N½N½;
Sec. 22, N½NW¼.

T. 19 S., R. 23 E.,
Sec. 1, lots 1, 2, 3 and S½NW¼;
Sec. 2, SE¼NW¼ and N½SW¼;
Sec. 3, S½SW¼, N½SE¼ and SW¼SE¼;
Sec. 4, S½SE¼;
Sec. 9, NW¼NE¼;
Sec. 18, lot 1 and NE¼NW¼.
T. 18 S., R. 24 E.,
Sec. 31, SE¼SW¼ and S½SE¼;
Sec. 33, S½NW¼ and NW¼SW¼.
T. 19 S., R. 24 E.,
Sec. 6, lots 3 and 4.
T. 18 S., R. 26 E.,
Sec. 19, S½NE¼.
T. 18 S., R. 27 E.,
Sec. 11, S½SE¼;
Sec. 17, S½N½ and NW¼SW¼.

This pipeline will convey natural gas across 12.302 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-36307 Filed 12-28-78; 8:45 am]

[4310-84-M]

SOCORRO DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given that the Socorro District Grazing Advisory Board of the Bureau of Land Management will meet on Wednesday February 14, 1979 at 9:00 a.m. in the Hospitality Room of the First State Bank, 103 Manzanares Avenue, N.E., Socorro, New Mexico. The purpose of the meeting will be to organize the Board and discuss its functions and responsibilities, review the Federal grazing regulations, hold discussions on the allotment management plan implementation schedule for the Stallion and Ladron Planning Units, review the status of the district's range programs and make recommendations on the expenditure of range betterment funds.

The meeting is open to the public. Further information concerning this meeting may be obtained from the Socorro District Manager, Bureau of Land Management, 200 Neel Avenue, N.W., Socorro, New Mexico 87801 or by telephone at (505)—835-0412.

ARLEN P. KENNEDY,
District Manager.

DECEMBER 21, 1978.

[FR Doc. 78-36304 Filed 12-28-78; 8:45 am]

[4310-17-M]

Office of the Solicitor

VALID EXISTING RIGHTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

Retractivity of Secretarial Order No. 3029

SECTION 1. *Purpose.* The purpose of this notice is to announce the procedures under which the question of the retroactive application of Secretarial Order No. 3029 will be considered by this Department.

SEC. 2. *Background.* On November 27, 1978, Secretarial Order No. 3029, amending the Departmental position regarding valid existing rights under the Alaska Native Claims Settlement Act (ANCSA), was published in the FEDERAL REGISTER (43 FR 55287). As noted in the October 24, 1978, memorandum to the Secretary, adopted by the Secretary as the position of the Department on the subject of valid existing rights under ANCSA, the question of the retroactive application of Secretarial Order No. 3016, the Order which Secretarial Order No. 3029 has replaced, was not addressed in the original opinion of November 28, 1977, adopted by the Secetary in Secretarial Order No. 3016, nor was this queston adequately presented as an issue for reconsideration. Section 2 of Secretarial Order No. 3029 noted: "The question of retroactive application of this Order shall be addressed by the Solicitor under procedures which shall be announced by him within 30 days of this Order's effective date." Pursuant to this delegation from the Secretary, such procedures are set forth in Section 3 of this notice.

SEC. 3 *Policy.* (a) All parties who have participated in the administrative proceedings which will be affected by the determination of the question of the retroactive application of Secretarial Order No. 3029, and all other interested parties, are given 30 days from the date of this notice to submit any written comments on this question to the Department. Comments should be sent to: Solicitor, United States Department of the Interior, Washington, D.C. 20240.

(b) After review and analysis of the submissions, a separate opinion on this question will be issued. The Secetary has reserved the final authority to determine the question of the retroactive application of Secretarial Order No. 3029, and will do so in an amendment to said Order.

SEC. 4. *Effective Date.* This notice is effective immediately and will continue in effect until the issuance of the amendment to Secretarial Order No. 3029.

Dated: December 26, 1978.

LEO KRULITZ,
Solicitor.

[FR Doc. 78-36334 Filed 12-28-78; 8:45 am]

[4710-07-M]

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section

IMPLEMENTATION OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: The purpose of this document is to publish the United States Section's Final Procedures to be effective March 29, 1979.

SUMMARY: The procedures proscribes policies and procedures utilized or to be utilized by the United States Section in implementing Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) in the planning, design and construction of treaty projects along the United States and Mexican international boundary and to the United States Section's operation and maintenance activities in connection with treaty projects. The final procedures are designed to be coordinated with the environmental review of requirement established in the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT:

Mr. Frank P. Fullerton, Legal Adviser, International Boundary and Water Commission, United States Section, United States and Mexico, 4110 Rio Bravo, 200 IBWC Building, El Paso, Texas 79902, FTS: 572-7893.

PROCEDURES OF THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, TO IMPLEMENT THE OBJECTIVES OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

Executive Order 11988—Floodplain Management (May 24, 1977)—requires each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect

consideration of flood hazards and floodplain management. Guidance for implementation of the Order is provided in the Water Resources Council "Guidelines for Implementing Executive Order 11988", dated February 10, 1978.

Executive Order 11990—Protection of Wetlands (May 24, 1977)—requires all Federal agencies to issue or amend existing procedures to insure consideration of wetlands protection in decision making.

It is the intent of both Executive Orders that Federal agencies implement the floodplain/wetlands requirement through existing procedures such as those established to implement the National Environmental Policy Act of 1969 (NEPA). In those instances where the impact of actions in floodplain/wetlands are not significant enough to require the preparation of an environmental impact statement (EIS) under Section 102(2)(C) of NEPA, alternative floodplain/wetlands evaluation procedures are to be established.

PURPOSE

The United States Section has adopted or reaffirms the following described policy and procedures to assure responsiveness to the objectives, needs and intent of Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) to: (1) reduce the risk of flood loss, (2) minimize the impact of floods on human safety, health and welfare, (3) restore and preserve the natural and beneficial values served by floodplains along the limitrophe section of the Rio Grande and the Colorado River, (4) prohibit the destruction or modification of wetlands, (5) prohibit new construction in the floodplains and wetlands within the United States along the limitrophe section of the Rio Grande and the Colorado River, (6) describe the decision-making process to be utilized by the Section, including public notice, (7) provide the opportunity for early public review of any proposed action of the Section by means of meetings and hearings, to assure input of public concerns as well as the consideration of the provisions of any treaty and agreement between the United States and Mexico, (8) describe the evaluations to be made by the Section of practicable alternatives of proposed actions in the floodplains and the wetlands in the limitrophe section of the Rio Grande and the Colorado River, (9) describe the limitations on activities in floodplains and wetlands, (10) provide conspicuous delineation of structures and other places, where appropriate, of past and probable flood heights, (11) provide appropriate restrictions in permits, licenses, and in conveyances and uses of Federal property under the jurisdiction of the United States Section, and (12) seek the cooperation of the city, county and state officials in preventing construction of work in the floodplains along the limitrophe section of the Rio Grande and Colorado River which may obstruct the normal or flood flows of those rivers.

POLICY

The United States Section has a general mandate and broad responsibility to reduce to a minimum the shifting of the channels of the Rio Grande and Colorado River by prohibiting the construction of works in the floodplain/wetlands which may cause deflection or obstruction of the normal flow of the rivers or of their flood flows. In the boundary area (United States and Mexico), the policy of the United States Section is to exercise leadership and take action to avoid the adverse impacts caused by the occupancy and modification of floodplains and wetlands.

The United States Section will integrate floodplain management and wetland protection requirements into its programs and missions and will utilize, to the extent practicable, existing consultation, planning and decision-making processes.

The United States Section shall:

1. Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative;

2. Incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision-making processes, and shall to the extent practicable:

a. Reduce the hazard and risk of flood loss;

b. Minimize the impact of floods on human safety, health, and welfare;

c. Restore and preserve natural and beneficial values served by floodplains;

d. Require the construction of United States Section structures and facilities to be in accordance with the standards and criteria, and consistent with the intent, of the regulations promulgated pursuant to the National Flood Insurance program;

e. Minimize the destruction, loss, or degradation of wetlands;

f. Preserve and enhance the natural and beneficial values of wetlands.

3. Undertake a careful evaluation of the potential effects of any United States Section action taken in a floodplain and any new construction undertaken by United States Section in wetlands not located in floodplain;

4. Identify, evaluate, and implement, as appropriate, alternative actions which may avoid or mitigate adverse floodplain/wetlands impacts;

5. Provide opportunity for public review of actions proposed in floodplains and wetlands; and

6. Prohibit the construction of works in the floodplain/wetlands which may cause deflection or obstruction of the normal flow of the Rio Grande and the Colorado River or of their flood flows.

DEFINITIONS

For the purpose of these procedures, the following terms shall have the meaning indicated:

1. "The Commissioner" means the United States Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico.

2. "United States Section" means the United States Section, International Boundary and Water Commission, United States and Mexico.

3. "Executive Order" means Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands).

4. "Limitrophe parts of the Rio Grande and Colorado River" means those reaches of the rivers that form the international boundary between the United States and Mexico.

5. "Wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats and natural ponds.

6. "Action" means any United States Section activity, including:

a. Acquiring, management, and disposing of Federal lands and facilities;

b. Providing federally undertaken, financed, or assisted construction and improvements; and

c. Conducting Federal activities and programs affecting land use, including but not limited to water and regulated land resources planning, regulating and licensing activities.

7. "Base Flood" means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

8. "Base Floodplain" means the 100-year floodplain (one percent chance

floodplain). Also see definition of floodplain.

9. "Channel" means a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

10. "Critical Action" means any activity for which even a slight chance of flooding would be too great.

11. "Facility" means any man-made or man-placed item other than a structure.

12. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source.

13. "Floodplain" means lowlands and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

14. "Floodproofing" means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

15. "Minimize" means to reduce to the smallest possible amount or degree.

16. "One Percent Chance Flood" means the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in 100-year period.

17. "Ordinary High Water Mark" means the line on the shore established by an analysis of all daily high waters. It is established as that point that is inundated 25 percent of the time and is derived by a flood duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as shelving, change in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.

18. "Practicable" means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost, technology, natural, social, economic, legal and implementation time.

a. Natural—topography, habitat, and hazards, etc.

b. Social—aesthetics, historic and cultural values, land use patterns, population and its characteristics, etc.

c. Economic—cost of space, construction, services, relocation, gain or loss of employment.

d. Legal—international treaties and agreements, congressional acts, leases and deeds.

19. "Preserve" means to prevent modification to the natural floodplain/wetlands environment or to maintain it as closely as possible to its natural state.

20. "Restore" means to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

21. "Structures" means a walled or roofed building, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

22. "Environmental Assessment" means a document prepared by the Section pursuant to the National Environmental Policy Act (NEPA) and the Section's procedures for implementing Section 102 of NEPA dated March 5, 1974, which assesses whether a proposed Section action would be "major federal action" and would "significantly affect" the quality of the human environment and which serves as the basis for a determination as to whether an environmental impact statement is required.

23. "Environmental Impact Statement" (EIS) means a document prepared in accordance with the requirements of Section 102(2)(C) of NEPA.

24. "New Construction" for the purpose of compliance with the Executive Orders shall include draining, dredging, channelizing, filling, diking, impounding and related activities and any structures or facilities begun or authorized after May 24, 1977 (date of the Executive Orders), and not granted a specific exemption by the Executive Orders.

25. "Negative Declaration" (ND) means a document prepared pursuant to the Section's procedures for implementing Section 102 of NEPA to certify a decision that an EIS will not be prepared for a proposed Section action.

26. "Public Notification" (PN) means a brief notice published in the FEDERAL REGISTER which describes a proposed floodplain/wetlands action and affords the opportunity for public review.

27. "Statement of Findings" means a statement issued pursuant to Executive Order 11988 which explains why a Section action is proposed in a floodplain, lists the alternatives considered, indicates whether the action conforms to applicable floodplain protection standards, and describes steps to be taken to minimize harm to or within the floodplain.

AUTHORITY

1. Executive Order 11988, which revoked and replaced Executive Order 11296, issued August 10, 1966, was issued in furtherance of the National Flood Disaster Protection Act of 1973, and the National Environmental Policy Act of 1969. Section 2(d) requires issuance of new or amended agency regulations.

2. Executive Order 11990 was issued in furtherance of the National Environmental Policy Act of 1969. Section 6 requires issuance of new or amended procedures.

REFERENCES

The following references are made an integral part of these procedures:

1. National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C.A. 4332);

2. Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970;

3. Executive Order 11988, Floodplain Management, May 24, 1977;

4. Executive Order 11990, Protection of Wetlands, May 24, 1977;

5. "Unified National Program for Floodplain Management", Water Resources Council, July 1976;

6. "Guidance for Floodplain Management", Water Resources Council, 42 FEDERAL REGISTER 52590, September 30, 1977;

7. "Guidelines for Implementing Executive Order 11988", Water Resources Council, 43 FEDERAL REGISTER 6030, February 10, 1978;

8. "Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969", March 5, 1974, United States Section, International Boundary and Water Commission;

9. 1970 Boundary Treaty (Treaties and other International Acts Series 7313);

10. American Mexican Boundary Treaty Act (Public Law 92-549);

11. 1944 Water Treaty (Treaty Series 994);

12. National Flood Insurance Program, Federal Insurance Administration (Department of Housing and Urban Development), 41 FEDERAL REGISTER 46962 and 43 FEDERAL REGISTER 2570.

APPLICABILITY

Except as stated hereinafter, these procedures are applicable to all activities under the jurisdiction of the

United States Section to carry out the United States obligations as defined in the boundary and water treaties with Mexico which may involve the construction or development in the floodplains or the modification or destruction of wetlands. Existing and proposed projects and programs, including licensing and permitting are included. Activities to which these provisions will not be applicable are:

1. Actions taken during and immediately following flood or other emergencies to save lives and to protect property and public health and safety;
2. The repair and maintenance of existing facilities and structures;
3. Modification of stream gaging stations;
4. Flood proofing or flood protection of existing structures or facilities within the floodplain; and
5. Actions which may be in conflict with Treaty obligations.

However, where unusual circumstances exist, the Section shall consider the need for a floodplain/wetlands assessment of these type of actions.

REPAIR OR IMPROVEMENT OF EXISTING STRUCTURES AND FACILITIES

The following actions relating to repair or improvement of existing structures and facilities will be accomplished in a manner to increase the useful life of the facility, reduce flood hazards, and protect and, where practical, restore natural values.

1. *Improvement and Maintenance of River Channels.* In compliance with the treaties and other agreements between the United States and Mexico and acts of the Congress, the United States Section excavates material from the channels of certain reaches of boundary rivers by use of mechanical equipment to maintain a definite channel for boundary location purposes, to conserve water and make required treaty water deliveries, and to maintain effective control of floods. The need for these actions is specified in the international agreements.

The material removed from the river is deposited in the following locations: within the project floodplain, land side of the project levees, and on other lands—private and government-owned, beyond the project, subject to the approval of the owners or those having jurisdiction. None of the excavated material will be deposited on wetlands. The selection of the particular area of deposition will be based upon available alternatives, ecological considerations, costs, flood hazards, and impact upon the floodplain. The removed material in some cases is made available to the private sector for utilization away from the project and the Section may authorize such removal by the private sector in accordance with its requirements, provided it does not dispose of materials on wetlands.

2. *Bank Stabilization, Boundary Preservation and Flood Control.* In carrying out its operational and maintenance activities where necessary to stabilize United States banks of the boundary rivers to preserve the international boundary between the United States and Mexico and to maintain its effective flood channel capacity, the Section may need to grade the banks, and to add riprap or other types of bank protection. Bank protection may also be required for public facilities, such as municipal water intakes, bridge abutments and sewage and irrigation wasteway outfalls.

3. *Clearing Vegetation.* To maintain the water carrying capacity of the river channels and to preserve the international boundary, the clearing operations of the United States Section, at times and in some areas, require the removal of vegetation from certain portions of the banks and main channel of the rivers.

4. *Construction, Operation and Maintenance of Structures.* The United States Section constructs, operates and maintains structures along and across river boundaries and near the mouths of tributaries, including dams, grade control structures, levees, gaging stations and appurtenant works for measuring waters to provide data for effective project operation and to determine the national ownership of water, in accordance with treaties with Mexico.

The construction of these structures at times and in some places, requires construction of temporary works to protect the construction area from river flows. Maintenance of these structures is performed as necessary, and may include the addition of material in the channel or on lands adjacent to the channel.

CONSTRUCTION OF NEW WORKS

The actions of this Section involving construction of new works will comply with the procedures described herein.

PROCEDURES FOR COMPLIANCE

1. For activity requiring compliance with the Executive Orders, the United States Section staff will use the procedure as described herein, and will concurrently apply its procedures for environmental considerations under the National Environmental Policy Act.

2. Floodplain management principles and procedures will be taken into account when formulating or evaluating any water or land use proposal to insure that land and water resource use will be appropriate to the degree of hazard involved. Review of applications for licenses and permits shall include full consideration of flood hazards to assure appropriate floodplain management.

3. Flood hazards and, to the degree they are quantifiable, floodplain values, will be expressed in terms of:

a. Potental (or residuals) for monetary loss;

b. Human safety, health and welfare;

c. Shifting of costs or damage to others; and

d. Potential for affecting the natural and beneficial floodplain values.

4. The procedures established herein shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and consistent with the intent of those promulgated under the National Flood Insurance Program. Deviations shall be acceptable only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility or are in conflict with treaty obligations.

5. The evaluation of whether an alternative is practicable shall include:

a. Whether it is allowable under existing international treaties and agreements;

b. In conformance with the Federal Insurance Administration's criteria and methods for minimizing flood damage; and

c. Environmental, social, economic, and legal considerations.

DECISION MAKING PROCESS

STEP 1. Delineate the floodplain and determine if the proposed action is located in or may impact the floodplain.

a. Determine the base flood and delineate on an appropriate map the base floodplain, using the best available information.

b. In the event a critical action is being considered, the critical action floodway will be defined.

c. Define wetland areas and delineate these areas on the map with base floodplain delineation.

If the proposed action is not in the base floodplain (or critical floodplain as applicable), proceed to Step 4.

STEP 2. Issue a public notice as early as possible of possible action which may be in or impact the floodplain. The notice shall include a description of the proposed action, a listing of alternatives being considered, and an invitation to provide comments throughout the decision making process.

STEP 3. Identify and evaluate the practicable alternatives to locating in the floodplain. This evaluation shall include avoidance of the floodplain through alternative siting and alternative actions which would accomplish the intended functions but which would minimize harm to or within the floodplain, including no action.

STEP 4. Identify and evaluate impacts of the alternatives on the applicable floodplain and the direct and indirect effects which may support floodplain development that would have additional impacts. If the proposed action is outside the floodplain and has no identifiable impacts or support of floodplain development, it can be implemented (Step 8), providing it complies with wetland requirements defined later herein.

STEP 5. If the alternatives have adverse impacts in the floodplains or supports floodplain development, means are to be described to minimize the adverse impacts and where practical, restore natural values.

STEP 6. Reevaluate the alternatives, taking into account the flood hazards, identified impacts, opportunities to restore and preserve floodplain values, and environmental, social, economic and legal factors.

STEP 7. If it is determined that the only practicable alternative is locating in the floodplain, a statement of findings and public notice will be prepared, distributed and published. Depending upon the public input, a public hearing may be scheduled.

STEP 8. After a reasonable period to allow for public response, not less than fifteen (15) days, the Commissioner may take steps to implement the alternative.

Following are more detailed discussions of the procedures to implement the decision making process.

DELINEATION OF THE FLOODPLAIN

1. The procedure in delineating the base floodplain (base floodplain uses 100-year frequency flood and critical floodplain uses 500-year frequency flood) will be generally in accord with the "Guidance for Floodplain Management" published by the Water Resources Council, 42 Federal Register 52590, September 30, 1977.

2. The floodplain will be based on Flood Insurance Administration (FIA) maps. When FIA maps are not available, USGS quadrangle maps will be used with United States Section hydraulic studies and Flood Insurance Administration criteria for delineation of the extent of the base or critical floodplain.

PUBLIC INVOLVEMENT

1. For proposed floodplain/wetlands actions for which an Environmental Assessment or Environmental Impact Statement is required, the opportunity for early public review will be provided through existing NEPA procedures specified in this Section's Operational Procedures for Implementing Section 102 of NEPA. In these cases, either the Notice of Intent to prepare an Environmental Impact Statement or the Negative Declaration shall be used to satisfy the requirements for early public notification.

2. For proposed floodplain/wetlands actions for which no Environmental Assessment or Environmental Impact Statement is required, the Section shall provide the opportunity for early public review through preparation of a Public Notification, which shall:

a. Describe the proposed action, segment of floodplain involved, and alternative being considered, and include a location map.

b. State the time and place of public hearing if one is to be held.

c. Be published in the FEDERAL REGISTER and one or more newspapers of general circulation in the area.

d. Be distributed to:

(1) Property owners in immediate vicinity of the proposed action.

(2) City and county governments in the vicinity of the proposed action.

(3) Council of Governments and other agencies.

(4) Conservation associations.

(5) State and Federal agencies, including U.S. Fish and Wildlife Service and State Fish and Wildlife Agency.

(6) Other interested agencies and individuals.

For floodplain action subject to the Office of Management and Budget Circular A-95, the Section shall submit a copy of the Public Notice to the State and area wide A-95 clearing houses for the geographic area affected.

The procedure to be followed for obtaining public input will vary with the proposed action to be undertaken. For more significant actions a public hearing will be held. This hearing may be preceded and/or followed by periodic consultation meetings with representatives of appropriate groups and agencies to scope the studies to be made. In contrast, a relatively insignificant action such as location in the floodplain of a new buried pipeline may be handled solely by a mailed and published notice without meetings or hearings.

IDENTIFICATION AND EVALUATION OF PRACTICABLE ALTERNATIVES

Alternatives to be evaluated include:

1. Carrying out the proposed action outside the applicable floodplain (alternative sites).

2. Other means which accomplish the same purpose as the proposed action (alternative actions); and

3. No action.

If a practicable site exists outside the applicable floodplain, the proposed action cannot be located in the floodplain. When a floodplain site is the only practicable alternative, the agency's analysis supporting this conclusion should be fully documented. In determining the practicability of a non-floodplain site, the general concepts of site feasibility apply. At a minimum, site practicability shall include consideration of natural, social, economic, legal and environmental factors.

Alternative actions to be considered are those which can be substituted for the proposed action in that they comprise new solutions or approaches which serve the same function or purpose as that proposed, but which have less potential for harm.

For the alternative of no action, an evaluation should be made of the harm to or within the floodplain resulting from not undertaking the proposed action.

IDENTIFICATION OF IMPACTS OF THE PROPOSED ACTION

The impacts of the proposed action to be identified are impacts upon:

1. Lives and property.

2. Natural and beneficial floodplain values, including environmental values.

The basic types of impacts to be evaluated are:

1. Positive and negative.
2. Concentrated and dispersed.
3. Short-term and long-term.

Factors to be considered are:

1. The nature of the hazard and risk.
a. Historical floods.
b. Probability floods.
2. High hazard areas.
3. Natural moderation of floods.
4. Water quality maintenance.
5. Groundwater recharge.
6. Living resources—flora and fauna.
7. Cultural resources.
8. Agricultural, aquacultural, and forestry resources.

REQUIREMENTS TO MINIMIZE, RESTORE AND PRESERVE

The evaluation of a proposed action shall include consideration of means to minimize potential harm to or within the floodplain and shall include:

1. Reduction of potential harm to life and property within the floodplain with a goal of avoiding increased flood loss potential associated with the level of the base flood prior to the proposed action.

2. Minimizing potential harm applies to:

a. The investment risk, or the flood loss potential of the action itself;

b. The impact the action may have on others; and

c. The impact the action may have on floodplain values.

3. In the context of the Orders, "restore" focuses upon conditions existing as a result of prior actions, while "preserve" focuses upon the impacts of proposed action.

When a proposed action will result in harm to the natural floodplain environment, the Section will design or

modify the action to assure that it will be carried out in a manner which preserves as much of the natural and beneficial floodplain values as is possible. Guidance for possible means of preserving the floodplain are given by the Water Resources Council in its "Guidelines for Implementing Executive Order 11988 (Floodplain Management)", 43 Federal Register 6030, February 10, 1978.

REEVALUATION OF ALTERNATIVES

1. Determine which, if any, of the alternatives which are located outside or do not impact the base floodplain are implementable. Where such an alternative exists, the proposed action cannot be located in the floodplain.

2. Where an implementable alternative exists outside the floodplain but which has impact on or supports floodplain development, actions will be taken to minimize that impact and support.

3. If no implementable alternative exists outside the floodplain, the impacts of the floodplain alternative shall be thoroughly evaluated and measures to minimize those impacts and restore natural values shall be identified.

FINDINGS AND PUBLIC EXPLANATION

If the reevaluation results in the determination that there is no practicable alternative to locating in or impacting the floodplain, a statement of findings and public explanation shall be published in the FEDERAL REGISTER and provided to news media and sent to agencies, groups, and individuals previously contacted. The statement and public explanation shall include:

1. An explanation indicating why the proposed action is to be located in the floodplain;

2. A description of all significant facts considered in making the determination including alternative sites and actions;

3. A statement indicating whether the actions conform to applicable state or local floodplain guidelines;

In addition, and in keeping with the concept of the over all public involvement process discussed in Step 2, the following items should be included in the statement of findings and public explanation:

1. A description of why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action;

2. A description of how the activity will be designed or modified to minimize harm to or within the floodplain;

3. A statement indicating how the action affects natural or beneficial floodplain values;

4. A statement listing other involved agencies and individuals;

5. A provision for a brief comment period prior to agency action (15 to 30 days).

IMPLEMENTING THE ACTION

The proposed action can be implemented after:

1. Steps 1 through 7 of the decision-making process have been completed.

2. Comments received have been considered and a conclusion reached that the findings are still valid.

3. Environmental procedures have been completed under the National Environmental Policy Act.

4. A determination has been made that the proposed action is in accord with Executive Order 11990 in regard to wetlands.

WETLANDS

Wetlands will be delineated on appropriate maps for areas in and adjacent to projects of the United States Section, and in reaches of the Rio Grande, Colorado River, and other streams crossing the international boundary which may be considered for proposed activity. In making the wetlands determination, the Section shall utilize United States Fish and Wildlife Service National Wetlands Inventory Map, where available.

Operation and maintenance activities will be programmed to not adversely impact wetlands.

Evaluations of proposed new activities shall include consideration of an alternative which does not adversely impact wetlands. One or more alternative will be considered which include mitigation features for wetlands impacted in the event that alternative is selected as the proposed action.

MANAGING AND DISPOSAL OF FEDERAL LANDS

1. Management:

a. Licenses or Permits:

An application for a license must be accompanied by an environmental impact assessment as required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and where major adverse impact will result, the applicant shall furnish a detailed environmental impact statement as required by the National Environmental Policy Act.

Since all of the lands administered by the United States Section are within floodplain areas, no permanent improvements will be licensed except those that are not subject to flood damages or are floodproofed in accordance with the Unified National Program for Flood Plain Management of the Water Resources Council. If, upon examination of the application, it is found that the proposed work or its operation and maintenance will not interfere with the construction, operation and maintenance of any project works of the United States Section, and is consistent with permissible floodplain uses defined in the National Flood Insurance Program (Federal Insurance Administration), a license will be prepared by the Commission and transmitted to the applicant.

b. Leases:

All leases will contain provision to assure that the activities authorized are consistent with permissible floodplain uses defined in the National Flood Insurance Program (Federal Insurance Administration), and comply with the Executive Orders.

2. Disposal:

a. By United States Section:

The conveyances from the United States of America will, where applicable, incorporate a prohibition against filling of areas identified as wetlands and will contain a statement defining the potential flood hazards.

(1) Typical Provisions are:

Wetlands: That portion of the above-described land lying within the old riverbed of the Rio Grande, consisting of approximately——acres, is classed as "wetlands", as defined in Executive Order 11990, May 24, 1977, and is therefore protected and prohibited from destruction or degradation.

Flood Hazards: As directed by Executive Order 11988 (Floodplain Management, May 24, 1977), the Grantee is put on notice that all the lands described above are subject to a one percent or greater chance of flooding in any given year.

b. By General Services Administration:

The Report of Excess for Real Property (SF118, GSA) submitted by the United States Section, will reflect detailed information regarding known wetlands and any known flood hazards or flooding of the property.

PROCEDURES FOR DELINEATION OF PAST AND PROBABLE FLOOD HEIGHTS

The following procedures have been adopted in order to meet the requirements of Executive Order 11988 (Floodplain Management):

1. Issuance of public notices to the general public, all owners, lessees, and users of lands along the Rio Grande each year prior to the beginning of the flood season notifying that lands along the banks of the river are subject to flooding by releases from Commission dams and flood inflows from tributaries to the Rio Grande. The information provides data with respect to highest flood on record and possible river stages for different flood frequencies.

2. Prior to anticipated floods, issue information to the public by use of radio, television, state and local authorities and United States Section flood patrols, to evacuate flood danger areas.

3. At dams, place signs delineating areas restricting access and usage by the general public.

4. Encourage local, county and state agencies to seek legislation restricting the use of flood danger areas by public where the United States Government does not have authority to restrict the use of such areas.

5. Along floodways used during major floods, place signs at intersections with public roads informing the public the area is subject to flooding.

PROHIBITION OF CONSTRUCTION

To assure compliance with the Boundary Treaty of 1970, annually, usually in January or February, the Section will seek in writing, the cooperation of the city and county officials and their staffs, along the limitrophe parts of the Rio Grande and Colorado River, as well as state officials, to advise those who may desire to construct works on lands within the floodplain and adjacent to the main channel of the Rio Grande and Colorado River, where it forms the international boundary between the United States and Mexico, that plan for works be approved by the International Boundary and Water Commission before any work is performed. The appropriate officials will be requested to confer with the Section prior to approving plans for works along the limitrophe part of the rivers unless they have the prior approval of the Commission.

REFINING PROCEDURES

Refinements will be made to these procedures from time to time as experience is gained in their implementation.

[FR Doc. 78-36340 Filed 12-28-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. NU-PHONICS, INC., ET AL.

Proposed Final Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) through (h), that a proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the Eastern District of Michigan, Southern Division, Civil No. 671378, *United States* v. *Nu-Phonics, Inc., et al.* The Complaint in this case alleges that four corporations (Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; and Eastside Hearing Aid Center, Inc.), one partnership (Downriver Hearing Aid Center), and four individuals (Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center; Allan M. Kazel, d/b/a/ Metro Hearing Aid Center; and William T. Lafler, d/b/a Oakland County Hearing Aid Service) combined and conspired to fix, raise, and maintain the prices at which hearing aids were sold in the Detroit area (Wayne, Macomb, and Oakland Counties).

The proposed Judgment enjoins the defendants from engaging in the alleged conspiracy and prohibits them from communicating certain pricing information to other hearing aid dealers in the Detroit area.

Public comment is invited within the statutory 60 day time period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070).

Dated: December 19, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; Eastside Hearing Aid Center, Inc.; Downriver Hearing Aid Center; Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center; Allan M. Kazel, d/b/a Metro Hearing Aid Center; and William T. Lafler, d/b/a Oakland County Hearing Aid Service*, Defendants.

Civil No. 671378.

Judge Charles W. Joiner.

Filed: December 19, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceeding.

Dated: December 19, 1978.

John H. Shenefield, *Assistant Attorney General*, William E. Swope, Charles B. McAleer, John A. Weedon, *Attorneys, Department of Justice*. David F. Hils, Susan B. Cyphert, Dan Aaron Polster, *Attorneys, Department of Justice, Antitrust Division*. Kenneth J. Haber, *Assistant United States Attorney*.

For the defendants: William J. Weinstein, Esquire, Royal G. Targan, Esquire, Clyde B. Pritchard, Esquire, David R. Kratze, Esquire, William A. Sankbeil, Esquire, Alan R. Miller, Esquire, Richard Zipser, Esquire.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Civil No. 671378—Judge Charles W. Joiner—Filed: December 19, 1978.

UNITED STATES OF AMERICA, Plaintiff, v. NU-PHONICS, INC.; LUCAS, INC.; FERNDALE HEARING AID CENTER, INC.; EASTSIDE HEARING AID CENTER, INC.; DOWNRIVER HEARING AID CENTER; DANIEL F. BIFANO, d.b.a. CADILLAC HEARING AID & OPTICAL CO.; MURRAY DAVIS PEPPARD, d.b.a. DEARBORN HEARING AID CENTER; ALLAN M. KAZEL, d.b.a. METRO HEARING AID CENTER; and WILLIAM T. LAFLER, d.b.a. OAKLAND COUNTY HEARING AID SERVICE, Defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 30, 1976 and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment without further trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

NOW, THEREFORE, before any other testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a claim against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C. § 1), commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "hearing aid" means an electrical device which is usually worn by an individual and which assists the individual's ability to hear;

(C) "hearing aid dealer" means a person who sells hearing aids to the public or to the State of Michigan;

(D) "Detroit area" means the counties of Wayne, Macomb, and Oakland in the State of Michigan.

III

The provisions of this Final Judgment applicable to each of the defendants shall also

apply to each of its officers, directors, partners, agents, employees, subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing any contract, agreement, understanding, plan, program or concert of action with any other hearing aid dealer in the Detroit area, directly or indirectly, to:

(A) refrain from giving price quotations for hearing aids over the telephone;

(B) refrain from advertising prices for hearing aids;

(C) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

V

Each defendant is enjoined and restrained from, directly or indirectly:

(A) communicating to any other hearing aid dealer in the Detroit area information concerning:

(1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;

(2) the fact that such defendant is considering making changes or revisions in the prices, markups, or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;

(B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of this Section V.

VI

Nothing in Section V hereof shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

VII

Each defendant is ordered and directed:

(A) within thirty (30) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its employees who has pricing responsibility in connection with the sale of hearing aids;

(B) after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after employment;

(C) to attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this section VII a statement, in substantially the form set forth in Appendix A attached hereto, advising each person of his obligations and defendants' obligations under this Final Judgment, and of the penalties which may be imposed upon him and/or upon the defendants for violation of this Final Judgment.

VIII

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

X

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

APPENDIX A

The Final Judgment entered ————, 1978 in this case applies to each of the defendants named therein, to defendants' officers, directors, agents, employees, and subsidiaries. It is the obligation of each defendant and of its officers, directors, partners, agents and employees to abide by the terms of the Final Judgment. Violation of any of the provisions of the said Final Judgment may subject each defendant and its officers, directors, partners agents and employees to fines and/or imprisonment.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Civil No. 671378—Judge Charles W. Joiner—Filed: December 19, 1978

UNITED STATES OF AMERICA, Plaintiff, V. NU-PHONICS, INC.; LUCAS, INC.; FERNDALE HEARING AID CENTER, INC.; EASTSIDE HEARING AID CENTER, INC.; DOWNRIVER HEARING AID CENTER; DANIEL F. BIFANO, d.b.a. CADILLAC HEARING AID & OPTICAL CO.; MURRAY DAVIS PEPPARD, d.b.a. DEARBORN HEARING AID CENTER; ALLAN M. KAZEL, d.b.a. METRO HEARING AID CENTER; and WILLIAM T. LAFLER, d.b.a. OAKLAND COUNTY HEARING AID SERVICE, Defendants.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust procedures and penalties Act, 15 U.S.C. §§ 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On June 30, 1976, the United States filed a civil antitrust Complaint alleging that four corporations, one partnership, and four individuals, doing business as hearing aid dealers, conspired to fix prices in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleges that beginning at least as early as November 1974 and continuing thereafter at least until February 5, 1975, the defendants engaged in a combination and conspiracy to fix, raise, and maintain the prices at which hearing aids were sold in the Detroit area (Wayne, Macomb, and Oakland Counties).

The Complaint seeks a judgment by the Court declaring that defendants had engaged in an unlawful combination and conspiracy in unreasonable restraint of trade in violation of the Sherman Act. It also seeks an Order by the Court to enjoin and restrain the defendants from such acitivities in the future.

The corporate defendants named in the Complaint are: Nu-Phonics, Inc.; Lucas, Inc.; Ferndale Hearing Aid Center, Inc.; and Eastside Hearing Aid Center, Inc. The partnership named in the Complaint is Downriver Hearing Aid Center. The individual defendants named in the Complaint are Daniel F. Bifano, d.b.a. Cadillac Hearing Aid & Optical Co.; Murray Davis Peppard, d.b.a. Dearborn hearing Aid Center; Allan M. Kazel, d.b.a. Metro Hearing Aid Center; and William T. Lafler, d.b.a. Oakland County Hearing Aid Service.

Defendants' activities which gave rise to this civil action were also the subject of a criminal felony Indictment returned by a grand jury on June 30, 1976. The trial of the criminal case commenced on June 6, 1977. Before the United States completely presented its evidence, the trial was discontinued because the case was resolved in other ways. As to three of the defendants, the United States voluntarily dismissed the criminal charge because of the health of the principals. The remaining defendants pleaded *nolo contendere* to misdemeanor Informations which were filed by the United States. The felony Indictment was dismissed and the Court sentenced these remaining defendants. This civil action had been held in abeyance until the criminal charge was resolved.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

Hearing aids are electrical devices worn by persons with hearing problems to assist them to hear better. Hearing aid dealers sell hearing aids and usually provide associated products and services. Hearing aid dealers are paid either by the patient or, if the patient is covered by a form of public assistance, by a State or local public agency.

During the period specified in the Complaint, the defendants were hearing aid dealers in the Detroit area. During 1974, defendants had revenues of approximately $800,000 from the sale of hearing aids in the Detroit area.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning as early as November 1974 and continuing at least until February 5, 1975, the substantial terms of which were:

(a) to refrain from giving price quotations for hearing aids over the telephone;

(b) to refrain from advertising prices for hearing aids; and

(c) to charge $180 over cost for all State business (hearing aids sold to the public and paid for, in whole or in part, by a governmental entity or agency, including the State of Michigan and local public agencies).

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

(a) prices for hearing aids in the Detroit area have been fixed, raised and maintained at artificial and noncompetitive levels;

(b) price competition between the defendants and co-conspirators in the sale of hearing aids in the Detroit area has been restrained and eliminated; and

(c) purchasers of hearing aids in the Detroit area have been deprived of the benefits of purchasing hearing aids in an open and competitive market.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment states that it constitutes no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest (Section X of the Final Judgment).

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV provides that the defendants are enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, understanding, plan, program, or concert of action with any other hearing aid dealer in the Detroit area, to:

(a) refrain from giving price quotations for hearing aids over the telephone;

(b) refrain from advertising prices for hearing aids;

(c) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

Section V further enjoins each defendant from, directly or indirectly:

(A) communicating to any other hearing aid dealer in the Detroit area information concerning:

(1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;

(2) the fact that such defendant is considering making changes or revisions in the prices, markups or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;

(B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of Section V.

Section VII of the proposed Judgment orders and directs each defendant to:

(A) furnish a copy of the Judgment to each of its employees who has pricing responsibility in connection with the sale of hearing aids within thirty (30) days after the date of entry of the Judgment;

(B) furnish a copy of the Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after the new employee is employed; and

(C) attach to each copy of the Judgment furnished pursuant to subsections (A) and (B) of Section VII a statement advising each person of his obligations and of the defendants' obligations under the Judgment, and of the penalties which may be imposed upon him and/or upon the defendant for violation of the Judgment.

There is one limited exception to the prohibition against the exchange of information set forth in Section V of the proposed Judgment. This exception, contained in Section VI of the proposed Judgment, provides that nothing in Section V of the Judgment shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

The proposed Judgment is applicable to each of the defendants and to the officers, directors, partners, agents, employees, and subsidiaries of each defendant, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Judgment by personal service or otherwise (Section III).

Standard provisions similar to those found in other antitrust consent judgments are contained in Section I, concerning jurisdiction of the Court, Section VIII, concerning investigation and reporting requirements, and Section IX, concerning retention of jurisdiction by the Court over the parties to this final Judgment.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed final Judgment, any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may have had if the Judgment had not been entered. The Judgment may not be used, however, as *prima facie* evidence in private litigation pursuant to Section V(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070), within the 60-day period provided by the Act These comments and the Department's responses to them will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. Section IX of the proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the proposed Judgment provides appropriate relief against the violations charged in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No other material or document of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15

U.S.C. § 16) was considered in formulating this proposed Judgment. Consequently, none is submitted pursuant to that Section.

JOHN A. WEEDON,
Attorney, Department of Justice.

DAVID F. HILS,
SUSAN B. CYPHERT,
DAN AARON POLSTER,
Attorneys, Department of Justice, Antitrust Division, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, (Telephone: 216-522-4074).

KENNETH J. HABER,
Assistant U.S. Attorney.

Dated: December 19, 1978.

[FR Doc. 78-36267 Filed 12-28-78; 8:45 am]

[4410-05-M]

National Institute of Corrections

ADVISORY BOARD OF THE NATIONAL INSTITUTE OF CORRECTIONS

Bylaws

Notice is hereby given that the National Institute of Corrections (NIC) has amended the Bylaws which govern its affairs and operations as authorized under 18 U.S.C. Sections 4351-4353 (1974). The Bylaws (which were published in the FEDERAL REGISTER Vol. 41, No. 174—Tuesday, September 7, 1976 at pp. 37612-14) as amended follow.

ALLEN F. BREED,
Director,
National Institute of Corrections.

National Institute of Corrections

Bylaws

ARTICLE I—TITLE AND OBJECTS

The name of this organization shall be the Advisory Board of the National Institute of Corrections (NIC) hereinafter referred to as the Board of NIC or the Board.

Under the authority of 18 U.S.C. Sections 4351-4353 (1974) as provided for by Public Law 93-415, Title V, Part B hereinafter referred to as 18 U.S.C. Sections 4351-4353 (1974), NIC's overall goal is to aid in the development of more effective and humane federal, state and local correctional systems which will contribute to the safety of offenders, staff and the community by:

1. Providing the stimulus for cooperative and consolidated action by all groups impacting on corrections.

2. Establishing close working relationships with national, state and local correctional agencies.

3. Developing a larger sense of professionalism in corrections at all levels.

4. Drawing other professional groups into a closer relationship with correctional planning and practice.

In order to implement these objectives, 18 U.S.C. Sections 4351-4353 (1974) outlines five primary assistance areas that form the core of NIC's activities: training, research and evaluation, policy formulation and implementation, clearinghouse and publication, and technical assistance.

18 U.S.C. Sections 4351-4353 (1974) expressly charges the Board of NIC with both the authority and responsibility to develop and supervise the overall policy of NIC. The primary responsibility of the Board in this regard shall be to review and approve the Annual Program Plan presented by the Director of NIC.

ARTICLE II—ORGANIZATION

Section 1. *Membership and terms of office*—as required under 18 U.S.C. Sections 4351-4353 (1974), the Board of NIC shall consist of sixteen members:

Six individuals or their respective designees shall serve as ex officio members, these include: The Director of the Federal Bureau of Prisons, the Administrator of the Law Enforcement Assistance Administration, Chairman of the U.S. Parole Commission, the Director of the Federal Judicial Center, the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration and the Assistant Secretary for Human Development of the Department of Health, Education and Welfare. Any ex officio member of the Board who selects a designee to serve in his position shall notify the Board's chairman in writing of such action. This written notification must include the name and position of the designee. Any change in a respective designee must follow the same notification procedure.

Five members of the Board of NIC must qualify as practitioners at the federal, state or local level in the area of corrections. These individuals shall be appointed by the Attorney General for staggered terms, initially: one member shall serve for one year, one member for two years and three members for three years.

The five remaining members of the Board of NIC shall be selected from the private sector such as business, labor and education and shall have demonstrated an active interest in corrections. These five members shall be appointed by the Attorney General for staggered terms, initially: one members shall serve for one year, three members for two years and one member for three years.

Upon completion of the term of each of the ten members not serving ex officio, the Attorney General shall appoint successors who will each serve for a term of three years. Terms of appointment of each of the ten members not serving ex officio shall bear effective date of January 1.

Section 2. *Officers of the Board*—The Board shall elect annually a chairman and three vice-chairmen. These officers shall be elected by a simple majority vote of the Board. The term of the office for the chairman and vice-chairman shall be one year commencing upon completion of the Board's fall/winter meeting. No chairman or vice chairman shall serve more than two consecutive one year terms.

No ex officio member of the Board may serve as chairman of the Board. No designee may serve as an officer of the Board.

A. The Chairman shall:

1. Preside over all meetings of the Board.

2. Consult with Board members and the Director of NIC and develop an agenda for each meeting. The agenda shall include but not be limited to: a report from each standing and when appropriate from each ad hoc committee or task force, a report from the Director of NIC, and any proposed amendment to these bylaws.

3. Appoint as many ad hoc committees or task forces as are necessary to assist NIC in the accomplishment of its objectives.

4. Appoint each vice-chairman elected by the Board to chair a specific standing committees established under these bylaws and appoint members of those committees.

5. Perform such other functions and duties as the Board may authorize or request within the parameters of NIC's legislation (18 U.S.C. Sections 4351-4353 (1974)).

The Chairman of the Board is entitled to vote only in the event of a tie. The Chairman of the Board is a member of all committees and task forces of the Board but shall not be entitled to a vote on any committee or task force of the Board. Nor shall the Chairman of the Board be counted in the quorum of any committee or task force.

In event of his absence the chairman shall designate in writing a vice-chairman who will serve in his place. In event of the long term incapacitation or demise of the chairman the following rule of succession shall be applied. If eligible, succession shall occur in descending order:

1. Chairman, Policy Review Committee.
2. Chairman, Fiscal Review Committee.
3. Chairman, Grant Review Committee.

B. Each vice-chairman shall:

1. Serve as a chairman of one of the three standing committees established under these bylaws. In the event of his absence the chairman of any committee of the Board must designate a replacement for the interim.

Section 3. *Committee Structure*

A. *Standing Committees*—there shall be three standing Committees as follows: (1) Policy Review, (2) Fiscal Review, (3) Grant Review. Each of the standing committees will be composed of no more than five and not less than three members of the Board. Each standing committee shall be balanced as equally as possible with members from each of the three categories of Board members, i.e., ex officio, practitioners and private sector representatives. At no time shall more than two members from any one category serve on any one standing committee. No individual Board member shall serve no more than two standing committees at any one time. No designee may serve as chairman of a standing committee.

1. *Policy Review Committee*—this committee's responsibilities shall include:

(a) reviewing all proposals and suggestions relating to policy and/or procedure governing the Board's operations,

(b) reviewing all proposals or suggestion relating to general program areas within which NIC will commit its resources.

(c) reviewing all proposed amendments to these bylaws,

(d) reviewing all legislation impacting upon NIC. The committee shall report its recommendations to the Board.

2. *Fiscal Review Committee*—this committee's responsibilities shall include:

(a) participating with the Director of NIC in the development of a long-range fiscal plan,

(b) reviewing the fiscal allocations within the proceeding year's Annual Program Plan and making recommendations regarding funding adequacy and future funding. The committee shall report its recommendations to the Board.

3. *Grant Review Committee*—this committee's responsibilities shall include:

(a) developing policy for grant review,

(b) reviewing all documents and guidelines dealing with grant and contract funding.

(c) making recommendations to the director of NIC on concept papers or applications that are within NIC's approved thrust areas

but whose requested funding exceeds $300,000.

(d) serving in accordance with NIC's grant review policy as an appellate review board making recommendations to the Director of NIC in cases of appeal.

B. *Ad Hoc Committees and Task Forces*—the chairman is empowered to appoint as many ad hoc committees and task forces from the Board's membership as deemed appropriate to conduct the business of the Board. As with standing committees, representation on ad hoc committees should reflect, if possible, all three categories of Board membership as outlined in Article II, Section 1 of these bylaws. The nominating committee will be an ad hoc committee appointed annually by the chairman. This committee shall nominate a slate of candidates to replace each elected officer. Upon submission to the Board of its recommendations the committee shall be discharged.

ARTICLE III—DIRECTOR OF NIC

As provided for by 18 U.S.C. Section 4351 (h) (1974), the Director of NIC shall be appointed by the Attorney General after consultation with the Board of NIC.

Under 18 U.S.C. Section 4351(h) (1974), the Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of NIC and may employ such staff, faculty and administrative personnel, subject to the Civil Service and classification laws, as are necessary to the functioning of NIC. The Director shall have the power to acquire and hold real and personal property for NIC and may receive gifts, donations, and trusts on its behalf. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board.

In accordance with the policies of the Board of NIC and applicable law, the Board of NIC delegates to the Director the authority to issue procedures, regulations and guidelines to implement these policies.

It shall be the primary duty of the Director of NIC to present NIC's Annual Program Plan to the Board, and to execute the Annual Program Plan upon Board approval.

The Director of NIC shall also have the following duties: (1) to provide appropriate staff support to the Board and its committees as may be necessary for the fulfillment of their duties, (2) to present a report to the Board of NIC at each meeting of the activities of NIC to date, (3) to maintain an up-to-date file of any written authorization which ex officio members of the Board of NIC must file when designating an individual to serve in their place as provided for under 18 U.S.C. Sections 4351-4353 (1974), (4) to provide for the keeping and recording of the minutes of any meeting of the Board of NIC and upon request for any of the Board's committees, (5) to provide all Board members with notice of the upcoming meetings, the agenda for the meeting, the minutes of the last meeting and any other appropriate materials, (6) to provide the Board through its Grant Review Committee a quarterly report of grant and contract awards.

ARTICLE IV—MEETINGS

The Board shall meet three times annually. However, when deemed necessary, extra meeting may be called by the chairman or by at least five members of the Board.

Written notice of each meeting of the Board of NIC stating the place, date and hour of the meeting, shall be given to each member at least three weeks prior to the date of the meeting.

Notice of any special or extra meeting of the Board of NIC called by the chairman or five or more members of the Board shall indicate that it is being issued by or at the direction of the persons calling the meeting and shall state the purpose or purposes for which the meeting is being called. Special or extra meetings may be called at any time with consent of two-thirds of the Board. Notice of a special or extra meeting may be given by telephone and/or by mail and ratified by two-thirds of the Board at the special or extra meeting.

Notice of all meetings of the Board shall be given to the public. Such notice shall be published in the FEDERAL REGISTER at least 15 days prior to the meeting, provided that in emergencies, such requirements may be waived. This notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

Except for executive sessions, meeting of the Board shall be open to the public for observation. The chairman may invite more active participation from the public when such action is appropriate and does not interfere with the orderly transaction of the Board's business.

Executive sessions may be called by a majority vote of a quorum of the Board in public. No final action shall be taken at such meetings except upon votes in open session. These sessions shall not be used to obstruct the fullest possible public accessibility to meetings.

ARTICLE V—VOTING

All members of, as well as all officers who are members of the Board of NIC shall each be entitled to a vote on any issue before the Board. Proxy voting will be allowed at any meeting of the Board of NIC or at any meeting of its committees or task forces. The proxy must be written and filed with the chairman prior to the voting on the issue in question. Proxies may not be used to form a quorum.

Under 18 U.S.C. section 4351, a member serving ex officio may designate an individual to serve and vote in his postion at any meeting of the Board or its committees and task forces. Selection of a designee does not preclude an ex officio member from attending and voting at any meeting of the Board, its committees or task forces in place of his respective designee.

No action of the Board of NIC shall be valid and binding without a vote by a quorum of its members. A quorum of the Board shall consist of one-half or more of its members or designees.

ARTICLE VI—COMPENSATION OF BOARD MEMBERS

Under 18 U.S.C. sections 4351-4353 (1974), the members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to 18 U.S.C. sections 4351-4353 (1974), be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS—18 by section 5332 of Title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of Title 5, United States Code for persons in the Government service employed intermittently. Compensation and reimbursement as provided for by this Article shall be made only upon written request.

ARTICLE VII—PARLIAMENTARY AUTHORITY

Meetings of the Board and its committees shall be conducted in accordance with the rules contained in "Robert's Rules of Order Revised." These rules shall govern the Board in all cases where applicable and in which they are not inconsistent with these bylaws. Special rules of order preempting those contained in "Robert's Rules of Order Revised" may be adopted by the Board. Any special rules of order are to be incorporated in these bylaws as a separate section under this Article.

ARTICLE VIII—AMENDMENT OF THE BYLAWS

These bylaws may be amended at any meeting of the Board by a majority vote of a quorum of the Board. Amendments to the bylaws may be proposed by the Policy Review Committee or by any five members of the Board of NIC. Any proposed amendments must be written, signed and sent to Board members at least 15 days in advance of the meeting at which they will be discussed.

ARTICLE IX—NOTICE OF THE BYLAWS

Notice of these bylaws shall be published in the FEDERAL REGISTER.

[FR Doc. 78-36279 Filed 12-28-78; 8:45 am]

[4410-05-M]

GRANT AND CONTRACT REVIEW PROCESS

Procedures

Notice is hereby given that the National Institute of Corrections (NIC) has amended its procedures—which were published in the FEDERAL REGISTER Vol. 41, No. 216—Monday, November 8, 1976 at pp. 49200-49201—for the internal processing of concept papers, grant applications and/or contracts. These procedures cover concept papers, grant applications and/or contracts submitted by appropriate individuals, organizations or agencies with NIC's enabling legislation, (18 U.S.C. Sections 4351-4353 (1974)).

ALLEN F. BREED,
Director,
National Institute of Corrections.

1. *Purpose.* To formalize the responsibilities of the Advisory Board, Grant Review Committee of the Advisory Board, and the Director of the National Institute of Corrections with regard to grant and contract review and

award. To detail the steps involved in the review and award process.

2. *Directives affected.* Supercedes procedures contained in June 23-24, 1975, National Institute of Corrections Board Minutes. Supplements all official Government regulations.

3. *Definition of terms.* For purposes of this statement, the term "Director" means the Director of the National Institute of Corrections; the term "Advisory Board" means the Advisory Board of the National Institute of Corrections; and the term "Grant Review Committee" means the Grant Review Committee of the Advisory Board, National Institute of Corrections.

An "application" is a duly executed Standard Form 424—Federal Assistance, properly completed in compliance with application instructions and submitted from eligible parties in accordance with Federal Management Circular FMC 74-7 and FMC 73-7.

A "concept paper" is any submission of materials other than the Standard Form 424 which outlines in brief the submittor's programmatic and budgetary intent.

Concept papers and applications for grants originate from three primary sources: Those received in response to announced initiative efforts; those solicited by National Institute of Corrections staff; and those forwarded to the National Institute of Corrections unsolicited.

"Conflict of Interest"—The Department of Justice Standards of Conduct, 28 CFR Part 45.734-4, defining "Conflicts of Interest," apply to "employees" and "special government employees" as defined in this section.

The term "Contract" means establishment of a binding legal relationship basically obligating the seller to furnish personal property or nonpersonal services (i.e., unsupervised delivery of services or a product) and the buyer to pay therefore. It includes all types of commitments which obligate the Government to an expenditure of funds which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and order, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

"Employee" means an officer or employee of the Department of Justice and includes a special Government employee who is an individual retained, designated, appointed, or employed by the Department of Justice to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

"Field readers" are those individuals who review NIC selected concept papers and application statements from their professional perspective with the view of assessing the relative merits and feasibility of contemplated actions or activities of the submittor. These individuals appear on the Advisory Board's approved list of readers.

The term "Grant" means an agreement between the Federal Government and another party whereby the Federal Government provides funds or aid in kind to carry out specified programs, services or activities.

4. *Annual Program Plan.* Each year the Director of the National Institute of Corrections shall prepare for the approval of the Advisory Board an Annual Program Plan. This Plan shall outline the program priorities or thrust areas of the Institute, the types of grants and contracts to be undertaken in the next year and their estimated funding levels. The Annual Program Plan may be modified at any duly authorized meeting of the Advisory Board.

The Annual Program Plan shall serve as the framework and guidelines by which concept papers or applications will be reviewed.

5. *Action.* A. Each organization or person submitting a formal application for a grant will be asked to complete a statement of relationship to, association or affiliation with any National Institute of Corrections Advisory Board member and/or staff, past or present.

B. Each concept paper or application will receive a fiscal and programmatic review by the National Institute of Corrections staff. When submissions are deemed nonfundable by staff, a rejection letter stating briefly, the reason for rejection will be forwarded to the organization or person submitting the concept paper or application.

C. Where the concept paper or application is deemed potentially fundable and there is no known conflict of interest the following will apply:

(1) If the grant is within the approved National Institute of Corrections thrust areas, and funding level is: (a) less than $100,000; or (b) the grant is for the performance of any internal administrative functions of the National Institute of Corrections; or (c) an interagency agreement where another Federal agency is the recipient, the Director will review staff recommendations and make the award decision.

(2) When a concept paper or application is within the approved National Institute of Corrections thrust areas but requested funding level is greater than $100,000, the Director will obtain at least three field reviews from the Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections.

The Director will then review staff recommendations and field reviews and make an award decision.

(3) Where a concept paper or application is within the approved National Institute of Corrections thrust areas, but requested funding exceeds $300,000, the process will proceed as in C-2 above with the exception that the Director will seek the advice of the Grant Review Committee as to the appropriateness of the grant to the Annual Program Plan.

D. Where the concept paper or application is deemed potentially fundable but the statement referred to in 5-A above indicated potential conflict of interest, the considerations outlined in Section C above will apply but in addition there will be:

(1) Fiscal and programmatic review by staff and review by three field readers from the Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections;

(2) Where such reviews are positive, then the Director will seek the advice of the Grant Review Committee regarding the appropriateness of an award and then make an award decision.

E. Each organization or person submitting a concept paper or application will have the right to appeal nonfavorable considerations:

(1) Where concept papers or applications meet guidelines presented in C-1 or C-2 above, the Grant Review Committee will serve as the appellate review board and make recommendations to the Director for appropriate action.

(2) When concept papers or applications meet guidelines contained in C-3 above, the Chairman of the Advisory Board will appoint from the Board an appeals committee to make recommendations to the Director for appropriate action.

F. *Continuation grants.* Any initially approved grant for which a renewal or continuation is requested will be reviewed by NIC program staff. This review will include consideration of any evaluations and reports completed during the term of the grant, NIC's Annual Program Plan, as well as the need for a continued effort in the particular area covered by that particular grant. The reviewing staff will submit a recommendation to the Director. The Director will then make a decision on the continuation of the grant in question.

Appeals to decisions on continuation grants may be made in accordance

with the specifications outlined by Section E above.

6. *Reporting.* The Grant Review Committee will receive quarterly a listing of NIC grant awards. In addition, the Grant Review Committee will be advised quarterly of programmatic contracts entered into by NIC.

[FR Doc. 78-36280 Filed 12-28-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

FEDERAL COMMITTEE ON APPRENTICESHIP

Public Meetings

Pursuant to Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. 1), of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship will conduct the following open meetings:

(a) Joint Meeting:

FCA Subcommittees on Goals and Equal Apprenticeship Opportunity

Date: January 17, 1979.

Time: 9 a.m. to 11 a.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: 1. Followup on Recommendations of the Toledo Bend Meeting.

2. Rewording of Section I, 3 (b) concerning 1-year exemption from application of 29 CFR 30 to stimulate development of new apprenticeship programs.

(b) FCA Subcommittee on Research:

Date: January 17, 1979.

Time: 11 a.m. to 12 noon.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Discussion of the ETA Research and Evaluation Process.

(c) FCA Subcommittee on Goals:

Date: January 17, 1979.

Time: 1:30 p.m. to 2:30 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Recommendations of the Toledo Bend Meeting.

(d) FCA Subcommittee on Equal Apprenticeship Opportunity:

Date: January 17, 1979.

Time: 2:30 p.m. to 3:30 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: (a) Hotline for Telephone Exchange of Apprenticeship Information.

(b) Women's Issues.

(e) FCA Subcommittee on Federal-State Relations:

Date: January 17, 1979.

Time: 4 p.m. to 6 p.m.

Place: N-4437 (A-B), Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: Discussion of the University of Texas Study of Federal-State Rules and Responsibilities.

The Federal Committee on Apprenticeship will hold a full open meeting on Thursday, January 18, from 9 a.m. to 4:30 p.m.; Friday, January 19, 1979, from 9 a.m. to 12 noon in the Congressional Room, Quality Inn-Capitol Hill, 415 New Jersey Avenue, N.W., Washington, D.C.

The agenda for the meeting on January 18 will include:

1. Department of Labor Task Force to Study Foreign Apprenticeship Programs
2. American Vocational Association
3. Performance Evaluated Training System (United Brotherhood of Carpenters and Joiners)
4. Slide Presentation—"Women in Apprenticeship"
5. Report on Implementation of 29 CFR 30: Equal Employment Opportunity in Apprenticeship and Training
6. Goodyear Performance Based Training
7. William F. Patterson Memorial Fund
8. Status Report on New Initiatives and Other BAT Activities
9. Status Report on Apprenticeship Information Centers Program
10. Report of FCA Subcommittee on Research

The agenda for the meeting on January 19 will cover:

1. Slide Presentation on "BAT Apprenticeship"
2. Tennessee-Tombigbee Rural Employment Outreach E&D Project
3. Report of FCA Subcommittee on Federal-State Relations
4. Report of FCA Subcommittee on Goals of the FCA

Agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary *before January 15, 1979.* Thirty copies are needed for the members and for the inclusion of the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in a written statement, also the nature of the intended presentation and amount of time needed. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows: Mrs. Marion M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, N.W., (room 5434), Washington, D.C. 20213.

Signed at Washington, D.C. this 26th day of December 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training Administration.

[FR Doc. 78-36324 Filed 12-28-78; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-78-122-C]

AMERICAN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

American Coal Company, Box 310, Huntington, Utah 84528, has filed a petition to modify the application of 30 CFR 77.410 (automatic warning devices) to its Deseret, Bee-Hive and Little Dove Mines located in Emery County, Utah. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-194.

The substance of the petition follows:

(1) The petition pertains to Kubotas and Ford 1600 diesel utility tractors used in the mines for underground travel does not pertain to equipment used for hauling material or pulling man-trip cages.

(2) Maintenance of automatic warning devices that indicate movement in reverse has proven difficult because of the adverse conditions underground where the tractors are used most of the time.

(3) These tractors travel a maximum of four miles per hour in reverse.

(4) Because an operator can look over either shoulder with unobstructed view, the petitioner believes that the tractors do not need warning devices for movement in reverse.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before January 29, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 12, 1978.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 36142 Filed 12-28-78; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-78-30]

MORATA COAL CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that the Mine Safety and Health Administration (MSHA) has granted in part the petition (43 FR 8192) of Morata Coal Company to modify the application of 30 CFR 75.301 to its No. 4 Vein Slope Mine in Northumberland County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164. It has been determined that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard.

This determination was based on the following findings made by MSHA:

1. The quantity of air in the working faces and in the last opern crosscut was found to be in excess of the minimum requirements of 30 CFR 75.301.

2. Ventilation violation records revealed that the mine was not always in compliance with respect to the air quanity requirement in the face area. However, a hazardous condition due to methane, carbon dioxide, and other noxious or poisonous gases was not detected in the mine during the period of non-compliance.

3. Air sample analyses records and frequent onsite sampling confirm that harmful quantities of methane have not been detected in this mine.

4. The operator's records, as well as MSHA's, confirm that there were no ignitions, explosions, or mine fires in this mine since activation of the mine.

5. Air sample analyses records and frequent onsite sampling indicate that harmful quantities of carbon dioxide and other noxious or poisonous gases are not present in this mine.

6. Respirable dust was not found to be in excess of the maximum standards as verified by dust sample records, which revealed an average concentration of 0.13 mg/m³, which was well below the present maximum limit standard of 2.0 mg/m³. A high of 1.9 milligrams was recorded on an operator cycle of ten samples collected when the maximum was 20 milligrams. As regards dust concentrations in anthracite mines, we point out that respirable dust data collected when a representative mine was regulated to simulate conditions with air quantities requested for this mine, revealed that there was no appreciable increase in dust concentrations with these smaller air quantities.

7. The operator contends that extremely high air velocities in restricted airways and manways present a very dangerous flying object hazard to the miners. Investigation has revealed that these conditions do not exist in this mine, consequently, we do not agree that this is a problem in the mine.

8. The operator argues that high velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable cold mine. This investigation tends to substantiate this claim even though the investigation was conducted during the warmer months. The mine is wet, consequently, a damp atmosphere is ever present. This dampness coupled with the cold air induced into the mine during the winter months creates an unbearable damp, cold working environment. The induced cold surface air does not have a chance to adjust substantially upwards due to the fact that the mine is shallow and small, and air travel distance and time required to deliver the air to the working area is short.

9. Interview with the miners also substantiated petitioner's claim that the mine conditions caused in part by compliance with 30 CFR 75.301 contribute to difficulty in attracting and retaining mine employees.

10. MSHA investigators also found there was no electric face equipment or other electrically operated mechanical mining equipment used in this mine, thus further minimizing any need for the quantities of air required by 30 CFR 75.301.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the following:

That Section 75.301 of the implementing regulations, 30 CFR 75, be modified for the Morata Coal Company, No. 4 Vein Slope Mine, to require in part, the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful atmosphere.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 14, 1978.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 78-36143 Filed 12-28-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-124-C]

MULLINS AND SONS COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Mullins and Sons Coal Co, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies) to its No. 1 Mine, in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition pertains to the following equipment: 1 Joy 16 RB cutting machine, 2 Galis roof bolters, 1 Wilcox roof bolter, 5 Elkhorn battery scoops and 1 Long Airdox face drill.

2. This equipment ranges in height from 24 to 36 inches and was not designed to have canopies installed.

3. The petitioner is mining at face heights of 45 to 48 inches, but to reach the face the petitioner's equipment must pass under roof heights of less than 42 inches.

4. Because the floor of the mine is uneven, canopies on the petitioner's equipment would hit and loosen roof bolts, causing a hazard.

5. Canopies would limit the equipment operator's field of vision, creating a potential hazard.

6. For these reasons, the petitioner states that the application of the standard to the mine will result in a diminution of safety to the miners of the mine.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before January 29, 1979. Comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 18, 1978.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 78-36144 Filed 12-28-78; 8:45 am]

[4510-43-M]

[Docket No. M-77-259]

QUARTO MINING CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted the petition (42 FR 54885) of Quarto Mining Company to modify the application of 30 CFR 75.1700 to its Powhatan No. 4 Mine located in Monroe County, Ohio, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection afforded miners of the mine by the standard.

MSHA based its determination on the following findings:

Extensive research conducted by the U.S. Bureau of Mines and U.S. Energy Research and Development Administration (ERDA) has developed feasible and safe methods to plug abandoned oil/gas wells and eliminate the need for coal barriers around such wells. MESA Informational Report 1052 has concluded that certain plugging methods can effectively prevent well gases from entering the mine during regular mining operations and allow additional safety and operational benefits that are not possible under 75.1700.

MSHA's investigators and Chief, Safety Division recommended that the Petition for Modification of the application of Section 75.1700, Docket No. M-77-259 be approved as providing no less than the same degree of safety that Section 75.1700 does, if the following stipulations are adopted in the petition:

1. The procedures for plugging the wells and the safety precautions included in their Petition for Modification (30 CFR, subsection 75.1700) and this report shall be complied with.

2. Prior to plugging operations, the Petitioner shall file mining projections for the well to be plugged with MSHA so that a determination can be made as to whether the mining through of that well is necessary.

3. The Quarto Mining Company shall consult and cooperate with MSHA in plugging and mining in the 300-foot area around the well so that the technical expertise of the project will be available to MSHA.

4. The following procedures shall apply for longwall mining through a plugged well:

(a) Fire-fighting facilities to include fire extinguishers, rock-dust, and enough fire hose to reach the working place, shall be available.

(b) Equipment shall be checked for permissibility and serviced on the shift prior to mining through the well.

(c) The methane monitor on the longwall shall be calibrated and tested on the shift prior to mining through the well.

(d) Tests for methane will be made with a hand-held methane detector at least every ten (10) minutes from the time that mining is within 30 feet from the well until the well is intersected.

(e) The area shall be free from accumulations of coal dust and coal spillages, and rockdust shall be placed on the roof, ribs, and floor before the last shear cuts into the well.

5. The following procedures shall apply for the mining through of plugged wells with a continuous miner:

(a) Drivage sights shall be installed at the last breakthrough to assure intersection of the well and again if necessary to insure that the last sight line is no further than fifty feet from the well.

(b) Sufficient supplies of roof support and ventilation materials shall be available near the working place.

(c) Fire-fighting facilities to include fire extinguishers, rockdust and enough fire hose to reach the working place shall be available.

(d) A minimum of 9,000 cubic feet of air per minute shall be used to ventilate the working face during the mining through.

(e) Equipment shall be checked for permissibility and serviced on the shift prior to the mining-through.

(f) The area shall be free from accumulations of coal dust and coal spillages and rockdust shall be maintained on the roof, rib and floor to within twenty feet of the face.

6. When the well bore is intersected, all equipment shall be idled, deenergized and the place thoroughly examined and determined safe before mining is resumed. Any well casing shall be removed, and no open flame shall be permitted in the area until adequate ventilation has been established around the well bore.

7. Air samples shall be collected by MSHA personnel at the well bore following the mining-through and at other intervals as determined by MSHA.

8. After the well has been intersected and the working place determined safe, mining will continue in by the well a sufficient distance to permit adequate ventilation around the area of the well bore.

9. The mining-through operation shall be under the direct supervision of a certified official. Orders concerning the mining through operation shall be issued by the certified official in charge.

10. MSHA personnel may interrupt or halt the mining-through operation when it is necessary to insure the safety of the miners.

11. No person shall be permitted in the area of the mining through operation except those actually engaged in the operation, company personnel, representatives of the United Mine Workers of America, personnel from MSHA, and personnel from the Ohio Department of Mines.

12. A copy of the petition shall be maintained at the mine and be available to the miners.

13. Petitioner will notify MSHA prior to mining within 300 feet of the well.

14. The District Manager or Subdistrict Manager, MSHA, will conduct a conference just prior to, or within a reasonable time prior to, the mining-through of any plugged well, to review the specific plan for mining-through such well, and determine whether or not such plan is appropriate. Representatives of the operator, UMWA, and the State Department of Mines will be informed, within a reasonable time prior to the conference, and will be given an opportunity to attend and participate.

15. Krypton 85 can be used as an alernative tracer in plugging of oil or gas wells.

16. The MSHA District or Subdistrict Manager and representatives of the United Mine Workers of America (including the Chairman of the Mine Safety and Health Committee and the International Safety Inspector) shall be notified in sufficient time prior to the mining-through to have representatives present during the actual mining-through operation. Employees at the mine will be notified by mine management as to what is scheduled to take place.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the terms and conditions of the findings.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 15, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-36145 Filed 12-28-78; 8:45 am]

[4510-28-M]

Office of the Secretary

BOLTS, NUTS, AND LARGE SCREWS OF IRON OR STEEL

Notice of Report Findings and Availability

On November 3, 1978, the U.S. International Trade Commission (ITC) determined that increased imports of "Bolts, Nuts, and Large Screws of Iron or Steel" are a substantial cause of serious injury, or the threat thereof, to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (43 FR 52294).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on "Bolts, Nuts, and Large Screws of Iron or Steel". The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the U.S. Department of Labor has received 40 petitions for certification of eligibility to apply for adjustment assistance from workers engaged in the production of bolts, nuts, and large screws of iron or steel. The Department certified 20 of these cases and 17 were denied. One petition was withdrawn by the petitioner prior to an investigation, and two investigations are in progress. As of August 31, 1978 the Department had paid $6,998,017 in the form of trade readjustment allowances to 4,702 workers.

2. Employment of workers producing bolts, nuts, and large screws of iron or steel was slightly higher in the first half of 1978 than in 1976, but remained substantially below the levels reached in 1973 and 1974. Employment, man-hours, and hours worked per week have been essentially constant over the last two years. However, demand for labor in the industry is very unlikely to increase, and some erosion of employment is possible during 1979, depending on economic conditions and potential import increases. Most separated workers should be eligible for trade adjustment assistance.

3. Unemployment rates in eleven of the 25 areas with plants producing bolts, nuts, and large screws of iron or steel were above the national unemployment rate of 5.8 percent (unadjusted) for August 1978. Unfavorable local labor market conditions, especially for those areas having several plants, indicate that reemployment prospects for many of the separated workers in impacted areas are generally unfavorable.

4. The age distribution of workers in the bolts, nuts, and large screws of iron or steel industry indicate that these workers are substantially older than clients targeted by CETA sponsors for impacted areas. The Comprehensive Employment and Training Act (CETA) sponsors appear to have sufficient funding, positions, or both for those displaced workers who qualify. For displaced trade impacted workers not covered by CETA programs, the U.S. Department of Labor has the authority, within funding limitations, to purchase specific training.

Copies of the Department report containing nonconfidential information developed in the course of the 3-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (phone 202-523-7665).

Signed at Washington, D.C. this 19th day of December 1978.

HOWARD D. SAMUEL,
Deputy Under Secretary, International Affairs.

[FR Doc. 78-36146 Filed 12-28-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C this 15th day of December 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Leemar Knitting Mills, Inc./Winmore Knitting Mills, Ltd. (company).	Long Island, City, N.Y	Dec. 11, 1978	Dec. 5, 1978	TA-W-4,531	Woven ladies' and men's wear.
Marion Harwood Manufacturing Co., Marion Plant (workers).	Marion, Va	do	Dec. 7, 1978	TA-W-4,532	Men's and boys' and some infants pajamas.
Marion Harwood Manufacturing Co., Holston Plant (workers).	Marion, Va	do	do	TA-W-4,533	Men's pajamas and robes.
Marion Harwood Manufacturing Co., Abingdon Plant (workers).	Abingdon, Va	do	do	TA-W-4,534	Men's pajamas, and some boy's, and men's under shorts and sport shorts.
Robinson Manufacturing Co. (company).	Robinson, Ill	do	Dec. 6, 1978	TA-W-4,535	Children and growing girls' shoes.
Saco Tanning Corp. (company)	Saco, Maine	do	Dec. 4, 1978	TA-W-4,536	Tanning of hide leather for shoes and garments.
Valley Knitting Mills, Inc. (workers)	Haskell, N.J	do	Dec. 7, 1978	TA-W-4,537	Women's sweaters.
Casey Manufacturing Co. (company)	Casey, Ill		Dec. 5, 1978	TA-W-4,524	Shoes for boys' and young men.
Coopar Alloy Corp. (International Modlers' and Allied Workers Union).	Hillside, N.J	Dec. 14, 1978	Dec. 14, 1978	TA-W-4,525	Casting and foundry work.
Ettelbrick Shoe Co. (company)	Greenup, Ill	Dec. 11, 1978	Dec. 6, 1978	TA-W-4,526	Warehouseing of finished shoes, raw materials and shipment to the customers.
F. W. Fischer Co., Inc. (workers)	New York, N.Y	do	Dec. 7, 1978	TA-W-4,527	Children's coats and preteen's.
Florsheim Shoe Co. (United Shoe Workers of America).	Cape Girardeau, Mo	Dec. 13, 1978	Dec. 11, 1978	TA-W-4,528	Men's footwear.
Greenup Manufacturing Co. (company).	Greenup, Ill	Dec. 11, 1978	Dec. 5, 1978	TA-W-4,529	Children, growing girls and boys' shoes.
Kawecki Berylco Industries, Zirtech Division (USWA).	Albany, Oreg	do	Dec. 6, 1978	TA-W-4,530	Tubing for airline and aerospace industries titanium, zirconium, copper berrilium.

[FR Doc. 78-36147 Filed 12-28-78; 8:45 am]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 8, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of international Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of December 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Aberdeen Sportswear (ACTWU)	Belmar, N.J	Dec. 14, 1978	Dec. 12, 1978	TA-W-4,538	Cloth outerwear for men.
Almet Distribution Co., Inc. (company).	Los Angeles, Calif	Dec. 18, 1978	Dec. 14, 1978	TA-W-4,539	Partial assembly, testing packaging, sales and distribution of sewing machines and sewing machine cabinets.
Bergen Knitting Mills, Inc. (workers)	Union City, N.J	do	do	TA-W-4,540	Men's, children's and ladies' sweaters.
Master Corp. of Texas (workers)	Abilene, Tex	Dec. 14, 1978	Dec. 11, 1978	TA-W-4,541	Presto deep fryers and pop corn poppers.
North American Refractories Co. (USWA).	Mt. Union, Pa	do	Nov. 15, 1978	TA-W-4,542	Refractories and silca refractories brick.
Roberts Consolidated Industries (United Paperworkers International Union).	Piqua, Ohio	do	Nov. 30, 1978	TA-W-4,543	Carpet tact strip.
Taunton Dress, Inc. (workers)	Taunton, Mass	Dec. 15, 1978	Dec. 15, 1978	TA-W-4,544	Contractor of ladies' pantsuits, blouses and dress.

[FR Doc. 78-36148 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4084]

AVONDALE MILLS EVA JANE PLANT, SYLACAUGA, ALA.

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-4084: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 22, 1978 in response to a worker petition received on August 18, 1978 which was filed on behalf of workers and former workers producing polyester/cotton blend fabrics at the Eva Jane Plant of Avondale Mills in Sylacauga, Alabama.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39458). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Avondale Mills, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department of Labor conducted a survey of some of the customers of Avondale Mills, Eva Jane Plant. None of the customers responding purchased imported polyester/cotton blend fabric between 1976 and July 1978.

Conclusion

After careful review, I determine that all workers of the Eva Jane Plant of Avondale Mills in Sylacauga, Alabama, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36149 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4057]

BELROSE KNITTING MILLS, HOBOKEN, N.J.

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-4057: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 15, 1978 in response to a worker petition received on August 14, 1978 which was filed on behalf of workers and former workers producing men's, women's and children's sweaters at Belrose Knitting Mills, Hoboken, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635-36). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Belrose Knitting Mills, its customers (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the customers of Belrose Knitting Mills representing a majority of sales. The survey revealed that respondents did not purchase imported sweaters or use foreign contractors.

Conclusion

After careful review, I determine that all workers of Belrose Knitting Mills, Hoboken, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36150 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4164]

BENDIX CORP. ABRASIVES DIVISION, JACKSON, MICH. PLANT

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-4164: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 19, 1978 in response to a worker petition received on September 15, 1978 which was filed by the United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of workers and former workers producing abrasive grinding wheels at the Jackson, Michigan plant of the Bendix Corporation, Abrasives Division.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50270). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Bendix Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Bendix Corporation Abrasives Division intends to close the Jackson, Michigan plant in January 1979. Production facilities at the Jackson plant will be moved to North Manchester, Indiana. Employment at the Jackson plant is on the decline, while divisional employment and divisional sales of grinding wheels are currently increasing.

Conclusion

After careful review, I determine that all workers of the Jackson, Michigan plant of the Bendix Corporation Abrasives Division 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 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36151 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4276]

SAUCON MILLS, BETHLEHEM STEEL CORP., BETHLEHEM, PA.

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-4276: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 10, 1978 which was filed on behalf of workers and former workers involved with scheduling production operations at the Saucon Mills of Bethlehem Steel Corporation, Bethlehem, Pennsylvania. The investigation revealed that the plant primarily produces carbon steel structural shapes. Pursuant to an earlier investigation (TA-W-1496), workers were certified as eligible to apply for adjustment assistance. A termination date of January 1, 1977 was imposed. A subsequent investigation was conducted (TA-W-3729, 3730, and 3731) to determine if the January 1, 1977 termination date could be extended. A negative determination was issued on October 16, 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-9). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bethlehem Steel Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

* * * that sales or production, or both, of the firm or subdivision have decreased absolutely * * *.

Sales and production at the Saucon Mills increased in 1977 compared with 1976 and continued to increase in the first ten months of 1978 compared with the like period in 1977.

Conclusion

After careful review, I determine that all workers of the Saucon Mills of the Bethlehem Steel Corporation, Bethlehem, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December, 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36152 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4237]

BOAT ANTHONY AND JOSEPHINE, INC., GLOUCESTER, MASS.

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-4237: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 4, 1978 in response to a worker petition received on October 3, 1978 which was filed on behalf of workers and former workers catching and selling fish for Anthony and Josephine, Gloucester, Massachusetts. The investigation revealed that the company name is Boat Anthony and Josephine, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060-61). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Boat Anthony and Josephine, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S imports of groundfish decreased in quantity from 755,538 thousand pounds in 1976 to 736,302 thousand pounds in 1977 and decreased from 349,115 thousand pounds in the first six months of 1977 to 346,559 thousand pounds in the first six months of 1978. The ratio of imports to domestic production decreased from 191.0 percent in 1976 to 167.8 percent in 1977 and decreased from 159.1 percent in the first half of 1977 to 146.3 percent in the first half of 1978.

Commercial landings of groundfish at Gloucester, Massachusetts increased from 46,672 thousand pounds in 1976 to 70,453 thousand pounds in 1977 and from 36,483 thousand pounds in the first six months of 1977 to 44,075 thousand pounds in the first six months of 1978.

On March 30, 1977, the Fisheries Conservation Zone (FCZ), which limits domestic and foreign catches within 200 miles of the boundaries was established. Domestic landings of cod, haddock and yellowtail flounder were restricted and no foreign fishing of these species is permitted. Since the institution of FCZ, total imports of groundfish have declined.

Conclusion

After careful review, I determine that all workers of Boat Anthony and Josephine, Inc., Gloucester, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36153 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4308]

CAROL LEE FASHIONS, SANTA MONICA, CALIF.

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-4308: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 26, 1978 which was filed by the International Ladies' Garment Worker's Union on behalf of workers and former workers producing women's coats, suits and jackets at Carol Lee Fashions, Santa Monica, California. The investigation revealed that suits are not produced.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51866). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Carol Lee Fashions, the U.S. Department of Commerce, The National Cotton Council of America, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criteron has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

As a contractor Carol Lee Fashions sales equal its production. Sales at Carol Lee Fashions remained unchanged from 1976 to 1977 and increased in the first ten months of 1978 compared to 1977. Sales increased in four consecutive quarters from the fourth quarter of 1977 through the third quarter of 1978 when compared to the same quarter of the previous year.

Conclusion

After careful review, I determine that all workers of Carol Lee Fashions, Santa Monica, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research

[FR Doc. 78-36154 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4221]

COLUMBIA BELT AND NOVELTIES, INC., BOSTON, MASS.

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-4221: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 27, 1978 which was filed on behalf of workers and former workers producing belts at Columbia Belt and Novelties, Incorporated, Boston, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 44795). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Columbia Belt and Novelties, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Columbia Belt and Novelties sells its belts to garment manufacturers who then market them as a part of the garment. A Department survey of the major garment manufacturers to whom Columbia Belt sold its product revealed that none of these manufacturers purchased any imported belts in 1976, 1977 or in the first three quarters of 1978.

Conclusion

After careful review, I determine that all workers of Columbia Belt and Novelties, Incorporated, Boston, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36155 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4365]

CONTINENTAL GROUP, INC. PATERSON, N.J.

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-4365: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing articles needed for packaging: steel cans, boxes, drums, etc. at the Continental Group, Paterson, New Jersey. The investigation revealed that the plant primarily produces steel cans.

A previous petition (TA-W-2389) was filed on behalf of workers producing articles needed for packaging: steel cans, boxes, drums, etc. at the Continental Group, Paterson, New Jersey on September 19, 1977. The Department of Labor on December 29, 1977 issued a Notice of Negative Determination to those workers.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-13). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Continental Group, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of all metal cans have been negligible. Imports of metal cans have been less than .04 percent of U.S. production annually from 1973 through 1977. In 1976 and 1977 imports were .01 percent of U.S. production.

The petitioners allege that increased imports of steel have contributed importantly to separations at Continental Group, Paterson, New Jersey. Imports of steel cannot be considered to be like or directly competitive with steel cans.

Conclusion

After careful review, I determine that all workers of the Continental Group, Incorporated, Paterson, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December, 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36156 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3887]

CROWN ZELLERBACH CORP., BOGALUSA, LA.

Notice of Negative Determination Regarding Elgibility 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-3887: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 22, 1978 in response to a worker petition received on June 21, 1978 which was filed by the United Paper Workers' International Union on behalf of workers and former workers producing corrugated boxes, multi-wall bags and grocery bags at the Bogalusa, Louisiana plant of Crown Zellerbach Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29365-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Crown Zellerbach Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege injury due to imports of boxes, bags and converting machinery which is used to produce boxes and bags. Converting machinery can not be considered like and directly competitive with boxes and bags, which are the products produced and sold by the subject plant. Imports of boxes and bags must be considered in determining import injury to workers producing boxes and bags.

The department's investigation revealed that U.S. imports or corrugated boxes, multi-wall bags and grocery bags are negligible. The ratio of imports to domestic production from 1973 through 1977 was less than .10 percent for corrugated boxes, .20 percent or less for multi-wall bags and .24 percent or less for grocery bags.

Conclusion

After careful review, I determine that all workers engaged in employment related to the production of boxes, multi-wall bags, and grocery bags at the Bogalusa, Louisiana plant of Crown Zellerbach Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36157 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4185]

E&W OF MANILA, INC., MANILA, ARK.

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-4185: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 15, 1978 which was filed on behalf of workers and former workers producing blue jeans, fatigues, painters jeans and different types of work pants at E&W of Manila, Inc., Manila, Arkansas. The investigation revealed that the plant primarily produces blue jeans.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of E&W of Manila, its customers, (manufacturers), The National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

The Department conducted a survey of the manufacturer who purchased jeans from E&W of Manila. The survey showed that the manufacturer who accounted for all of E&W of Manila's sales increased imports from 1977 to 1978. It was learned that the manufacturer (parent company) of E&W, in order to maintain their place in the market, had to increase imports as it was no longer profitable to produce at E&W of Manila. This plant was closed permanently in April 1978.

U.S. imports of jeans and dungarees increased both absolutely and relative to domestic shipments in 1977 compared to 1976 and declined in the first half of 1978 compared to the first half of 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the blue jeans, fatigues, painters jeans and different types of work pants produced at E&W of Manila, Inc., Manila, Arkansas contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification: "All workers of E&W of Manila, Inc., Manila, Arkansas engaged in employment related to the production of blue jeans, fatigues, painters jeans and different type of work pants who became totally or partially separated from employ-

ment on or after September 6, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,

Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36158 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4166-4168 and TA-W-4171-4181 and TA-W-4330-4347]

GENESCO, INC., FOOTWEAR SECTOR, NASHVILLE, TENN.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4166 through 4168, 4171 through 4181, 4330 through 4347: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations for TA-W-4166 through 4168 and 4171 through 4181 were initiated on September 19, 1978 in response to worker petitions received on September 13, 1978, which were filed on behalf of workers and former workers engaged in employment related to the production of men's, women's and children's shoes of the General Shoe Company Division of Genesco, Incorporated. The name of the Division has been changed to Footwear Sector.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50270). No public hearing was requested and none was held.

The investigations for TA-W-4330 through 4347 were initiated on November 6, 1978 in response to worker petitions received on November 2, 1978 which were filed on behalf of workers and former workers engaged in employment related to the production of men's, women's and children's shoes of the General Shoe Company Division of Genesco, Incorporated. The name of the Division has since been changed to Footwear Sector.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53851-52). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Footwear Sector of Genesco, Incorporated, its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's, youths', and boys' dress and casual footwear, except athletic, decreased from 1976 to 1977. However, the ratio of imports to domestic production increased from 1976 to 1977. Imports decreased in the first six months of 1978 compared to the first six months of 1977. The ratio of imports to domestic production decreased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of women's and misses' nonrubber footwear, except athletic, decreased from 1976 to 1977. However, the ratio of imports to domestic production increased from 1976 to 1977. Imports increased in the first six months of 1978 compared to the first six months of 1977.

U.S. imports of athletic footwear increased from 1976 to 1977. The ratio of imports to domestic production increased from 1976 to 1977. Imports decreased in the first six months of 1978 compared to the first six months of 1977.

Company imports of footwear decreased in 1977 compared to 1976 and then increased in the first nine months of 1978 compared to the first nine months of 1977.

A Department survey of Genesco's customers indicated an increasing reliance on imported footwear by respondents. Some respondents indicated that they had increased their purchases of imported footwear while decreasing their purchases from Genesco.

These findings are consistent with industry trends, which show that imports have gained an increased share of the nonrubber footwear market in recent years. The ratio of imports to domestic production for nonrubber footwear has increased each year from 58.6 percent in 1974 to 94.4 percent in 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's, women's and childlren's footwear produced at the Footwear Sector of Genesco, Incorporated contributed importantly to the decline in sales of production and to the total or partial separation of workers of each of the petitioning plants. In accordance with the provisions of the Act, I make the following certification: "All workers of the plants listed below who became totally or partially separated from employment on or after the corresponding date listed below are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

	Plant	Impact Date
TA-W-4166	Carthage, Tenn.	Sept. 11, 1977.
TA-W-4167	Smithville, Tenn.	Do.
TA-W-4168	McMinnville, Tenn.	Do.
TA-W-4171	Gallatin, Tenn.	Do.
TA-W-4172	Lewisburg, Tenn.	Do.
TA-W-4173	Pulaski, Tenn.	Jan. 11, 1978.
TA-W-4174	Chapel Hill Terminal, Chapel Hill, Tenn.	Nov. 16, 1977.
TA-W-4175	Fayetteville Terminal, Fayetteville, Tenn.	Sept. 11, 1977.
TA-W-4176	Waynesboro, Tenn.	Do.
TA-W-4177	Hohenwald, Tenn.	Do.
TA-W-4178	Centerville, Tenn.	Do.
TA-W-4179	Camden, Tenn.	Jan. 25, 1978.
TA-W-4180	Footwear Sector Headquarters, Genesco Park, Nasville, Tenn., 111 Seventh Avenue, Nashville, Tenn..	Dec. 28, 1978.
TA-W-4181	J. & M. Shoe Plant, Nashville, Tenn.	June 7, 1978.
TA-W-4330	Danville Plant, Danville, Ky.	Oct. 30, 1977.
TA-W-4331	Fulton, Miss.	Do.
TA-W-4332	Iuka, Miss.	Do.
TA-W-4333	Ripley, Miss.	Do.
TA-W-4334	56th Avenue Rubber Mill, Nashville, Tenn.	Aug. 16, 1978.
TA-W-4335	Chapel Hill Sole Cutting, Chapel Hil, Tenn.	July 12, 1978.
TA-W-4336	General Adhesives and Chemicals Co., Nashville, Tenn.	Aug. 16, 1978.
TA-W-4337	Southern Sole, Nashville, Tenn.	Sept. 13, 1978.
TA-W-4338	Tullahoma Capitol Products, Tullahoma, Tenn.	Feb. 25, 1978.
TA-W-4339	Dominion Shoe Co. Terminal, Charlotte, N.C.	July 12, 1978.
TA-W-4340	Fulton Terminal, Fulton, Miss.	Jan. 18, 1978.
TA-W-4341	Genstar Terminal, Nashville, Tenn.	Oct. 30, 1977.
TA-W-4342	Huntsville Terminal, Huntsville, Ala.	Do.
TA-W-4343	J. & M. Terminal, Nashville, Tenn.	Aug. 2, 1978.
TA-W-4344	Customer Service Terminal, Nashville, Tenn.	Oct. 30, 1977.
TA-W-4345	Fayetteville Terminal, MMD, Fayetteville, Tenn.	Apr. 19, 1978.
TA-W-4346	63rd Avenue Terminal, MMD, Nashville, Tenn.	May 10, 1978.
TA-W-4347	Main Street General, Maintenance, Nashville, Tenn.	Oct. 30, 1977.

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,

Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36159 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4204]

GRAMERCY MILLS, INC., PASSAIC, N.J.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4204: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 21, 1978 in response to a worker petition received on Spetember 18, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing girls' bathing suits. The investigation revealed that Gramercy Mills also produces girls' sundresses.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Gramercy Mills, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, girls' and infants swimsuits increased from 486 thousand dozen in 1975 to 780 thousand dozen in 1976 and to 823 thousand dozen in 1977. Imports increased from 585 thousand dozen in the first three quarters of 1977 to 708 thousand dozen in the same period of 1978. The ratio of imports to domestic production of swimsuits increased from 20.7 percent in 1975 to 30.1 percent in 1976 and to 35.3 percent in 1977.

U.S. imports of children's dresses increased from 552 thousand dozen in the first three quarters of 1977 to 708 thousand dozen in the same period of 1978.

Gramercy Mills, Incorporated increased its company imports of girls' bathing suits by 111.2 percent in quantity and by 129.5 percent in value from the seasonal year August 1975/July 1976 to the seasonal year August 1976/July 1977. From August 1976/July 1977 to August 1977/July 1978, company imports increased by 147.9 percent in quantity and by 171.5 percent in value. Company imports as a percentage of sales increased from August 1976/July 1977 to August 1977/July 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with girls' bathing suits and sundresses produced at Gramercy Mills, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification: "All workers of Gramercy Mills, Incorporated, Passaic, New Jersey who became totally or partially separated from employment on or after April 7, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36160 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4309]

HARRIS FISHING CORP., F/V MARISSA ANN, MATTAPOSETT, MASS.

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-4309: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 25, 1978 which was filed on behalf of workers and former workers catching and selling fish for F/V Marissa Ann, Mattaposett, Massachusetts.

The investigation revealed that the name of the company that owns the Marissa Ann is Harris Fishing Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on November 11, 1978 (43 FR 51866). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Harris Fishing Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of groundfish decreased in quantity from 755,538 thousand pounds in 1976 to 736,302 thousand pounds in 1977 and decreased from 349,115 thousand pounds in the first six months of 1977 to 346,559 thousand pounds in the first six months of 1978. The ratio of imports to domestic production decreased from 191.0 percent in 1976 to 167.8 percent in 1977 and decreased from 159.1 percent in the first half of 1977 to 146.3 percent in the first half of 1978.

Commercial landings of groundfish at Gloucester, Massachusetts increased from 46,672 thousand pounds in 1976 to 70,453 thousand pounds in 1977 and from 36,483 thousand pounds in the first six months of 1977 to 44,075 thousand pounds in the first six months of 1978.

On March 30, 1977, the Fisheries Conservation Zone (FCZ) which limits domestic and foreign catches within 200 miles of its boundaries was established. Domestic landings of cod, haddock and yellowtail flounder were retricted and no foreign fishing of these species is permitted. Since the institution of FCZ, total imports of groundfish have declined.

Conclusion

After careful review, I determine that all workers of Harris Fishing Corporation, F/V Marissa Ann, Mattaposett, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36161 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4186]

HASPEL BROTHERS INC., NEW ORLEANS, LA.

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-4186: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 18, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's suits at Haspel Brothers Inc., New Orleans, Louisiana. The investigation revealed that Haspel Brothers made sportcoats and suitcoats, but no pants or vests.

Workers at Haspel Brothers Inc. were previously certified as eligible to apply for trade adjustment assistance on April 2, 1976 (TA-W-574). That certification remained in effect until April 2, 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Haspel Brothers, Inc., its customers, (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of men's and boy's tailored sportscoats decreased from 30,161 thousand in 1976 to 29,921 thousand in 1977. Imports increased from 4,401 thousand in the first three quarters of 1977 to 4,920 thousand during the same period in 1978. The ratio of imports to domestic production decreased from 30.0 percent in 1976 to 26.5 percent in 1977.

U.S. imports of men's and boy's tailored suits increased from 22,246 thousand in 1976, to 24,587 thousand in 1977. Imports decreased from 3,134 thousand in the first three quarters of 1977 to 2,943 thousand during the same period of time in 1978. The ratio of imports to domestic production increased from 19 percent in 1976 to 20 percent in 1977. Since Haspel Inc. sells its total production to Haspel Brothers Inc., a survey of the customers of Haspel Brothers Inc. was conducted. The survey revealed that customers representing a significant amount of business with Haspel Brothers Inc. decreased purchases from Haspel Brothers Inc. and increased purchases of imports in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period of 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the men's sportscoats and suit jackets produced at Haspel Brothers Inc., New Orleans, Louisiana contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification: "All workers of Haspel Brothers Ind., New Orleans, Louisiana who became totally or partially separated from employment on or after April 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36162 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3723]

INDUSTRIAL DIVISION, AEROQUIP CORP., YOUNGSTOWN, 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-3723: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 18, 1978 in response to a worker petition received on May 11, 1978 which was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America on behalf of workers and former workers producing wire braided hydraulic hose, freon hose, spiral hose, fuel and oil hose, loom hose and flex mandrel hose at the Youngstown, Ohio plant of Aeroquip Corporation, Industrial Division. The investigation revealed that the plant primarily produces reinforced rubber hose.

The Notice of Investigation was published in the FEDERAL REGISTER on June 13, 1978 (43 FR 25498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Aeroquip Corporation, its customers, the Rubber Manufacturing Association, the National Fluid Power Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey conducted with customers of Aeroquip revealed that most customers did not purchase imported reinforced rubber hose in 1977 or 1978. The customers that did import reinforced rubber hose had not decreased their purchases from Aeroquip during this same time frame.

Conclusion

After careful review, I determine that all workers of the Youngstown, Ohio plant of Aeroquip Corporation, Industrial Division 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 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36163 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3313]

JULES L. SIMON, INC., FRANKFORT, IND.

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3313: investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 7, 1978 in response to a worker petition received on February 27, 1978 which was filed on behalf of workers and former workers producing men's sport and suit coats at Jules L. Simon, Incorporated, Frankfort, Indiana.

The Notice of Investigations was published in the FEDERAL REGISTER on March 17, 1978 (43 FR 11277). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jules L. Simon, Incorporated, its manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers producing sport coats and without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boy's tailored dress coats and sportcoats decreased absolutely and relatively from 1976 to 1977. In the first quarter of 1978 imports increased absolutely compared to the same period of 1977.

With respect to workers producing suit coats, evidence developed in the course of the investigation revealed that all of the criteria have been met.

U.S. imports of men's and boys' tailored suits increased from 1976 to 1977 and decreased in the first quarter of 1978 compared to the same quarter of 1977.

The manufacturer which provided all of the contract work produced at Jules L. Simon, Incorporated is now out of business. Customers of the manufacturer increased their purchases of imported suits in 1977 and increased purchases of imported suits in the first six months of 1978 compared to the same period in 1977. The parent company of Jules L. Simon, Inc. started a new division in 1978 which is an importer of men's clothing.

Conclusion

After careful review, I determine that all workers of men's suit coats produced at Jules L. Simon, Incorporated, Frankfort, Indiana contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Jules L. Simon, Incorporated, Frankfort, Indiana engaged in employment related to the production of men's suit coats who became totally or partially separated from employment on or after August 28, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

I further conclude that all workers of Jules L. Simon, Incorporated engaged in employment related to the production of men's sportcoats are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 11th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-36169 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3983]

MONTCO MANUFACTURING CO., AMSTERDAM, N.Y.

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-3983: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 19, 1978 in response to a worker petition received on July 17, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing women's knitted sportswear at Montco Manufacturing Company, Amsterdam, New York. The investigation revealed that Montco produced women's knit tops and slacks.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Montco Manufacturing Company, its manufacturers and their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Some of the manufacturers which contracted with Montco Manufacturing were surveyed by the Department. Those manufacturers which had decreased contract work with Montco indicated that they did not purchase imported women's slacks or tops or use foreign contractors to produce these items in 1977 or during the first half of 1978.

Some customers of Montco's manufacturers which reported decreased sales were also surveyed by the Department. Respondents, in general, indicated that they did not decrease purchases from the manufacturer while increasing purchases of imported women's slacks and tops.

Conclusion

After careful review of the facts obtained in the investigation, I determine that all workers of Montco Manufacturing Company, Amsterdam, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36164 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3875]

THE MOORE CO., INC., SPRINGFIELD, MASS.

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-3875: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 20, 1978 in response to a worker petition received on June 19, 1978 which was filed by the General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees, Local No. 404 on behalf of workers and former workers producing hand tools at the Springfield, Massachusetts plant of the Moore Company, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 30, 1978 (43 FR 28580). No public

hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Moore Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production at the Springfield, Massachusetts plant of the Moore Company, Inc., increased from 1975 to 1976 and from 1976 to 1977. Estimated total sales for 1978 were greater than sales in 1977. Actual sales and actual production increased in the first two quarters of 1978 compared with the same period in 1977.

Conclusion

After careful review, I determine that all workers of the Springfield, Massachusetts plant of the Moore Company, Inc. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36165 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3338]

M. T. SHAW, INC., COLDWATER, MICH.

Certification of Eligibility to Apply for Worker Adjustment Assistance: Correction

In FEDERAL REGISTER Doc. 78-21744 appearing on pages 34558-34559 in the FEDERAL REGISTER of August 4, 1978, the second paragraph of the Conclusion should be corrected to read as follows: "All workers at M. T. Shaw, Incorporated, Coldwater, Michigan, who became totally or partially separated from employment on or after May 3, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36168 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4353]

NORTHAMPTON STEEL CORP., EASTON, PA.

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-4353: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 7, 1978 in response to a worker petition received on November 3, 1978 which was filed on behalf of workers and former workers fabricating structural steel at Northampton Steel Corporation, Easton, Pennsylvania. The investigation revealed that the plant is a wholly owned subsidiary of White Plains Iron Works, Pleasantville, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53852-3). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of White Plains Iron Works, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of Fabricated Structural Steel increased from 94.4 thousand tons in 1976 to 142.1 thousand tons in 1977, and decreased from 117.9 thousand tons in January-September 1977 to 101.4 thousand tons in January-September 1978.

The investigation revealed that none of the White Plains Iron Works unsuccessful contract bids in the second half of 1977 and in the first half of 1978 were awarded to foreign suppliers of fabricated structural steel.

Conclusion

After careful review, I determine that all workers of Northampton Steel Corporation, Easton, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36166 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4262]

PITTSBURGH HAT AND CAP CO., INC., PITTSBURGH, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4262: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 16, 1978 in response to a worker petition received on October 12, 1978 which was filed on behalf of workers and former workers producing baseball caps at Pittsburgh Hat and Cap Co., Inc., Pittsburgh, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50269-50270). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Pittsburgh Hat and Cap Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's, boy's, women's, misses', and junior's knit headwear and cloth hats and caps increased absolutely in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

Several customers who were surveyed indicated they increased purchases of imports while decreasing purchases from Pittsburgh Hat and Cap Co.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with knit and cloth caps produced at the Pittsburgh Hat and Cap Co. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Pittsburgh Hat and Cap Co., Pittsburgh, Pa., who became totally or partially separated from employment on or after September 19, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36167 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4280]

SLATER PAPER BOX CO., FALL RIVER, MASS.

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-4280: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 16, 1978 which was filed on behalf of workers and former workers producing corrugated and plain boxes at Slater Paper Box Company, Fall River, Mass.

The investigation revealed that the plant primarily produces paper folding boxes.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-59). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Slater Paper Box Co., Inc.; SPB Liquidating Co., Great Neck, N.Y.; APL Corp., New York, N.Y.; the American Paper and Pulp Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separations, or threat thereof, and to the absolute decline in sales or production.

The folding paper boxes produced by Slater Paper Box Co. are included in the import and production category "folding paperboard boxes". Imports of folding paperboard boxes have had a negligible impact on the domestic industry. Imports have increased absolutely from 900 tons in 1976 to 1,100 tons in 1977 and from 400 tons in the first half of 1977 to 700 tons in the first half of 1978; however, the ratio of imports to domestic production has been less than .1 percent during the period 1973 through the first half of 1978. The Department's investigation revealed that Slater Paper Box ceased operations in September 1978, due to internal financial difficulties.

Conclusion

After careful review, I determine that all workers of Slater Paper Box Company, Fall River, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36170 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4282]

TIARA FOOTWEAR, INC., DOVER, N.H.

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-4282: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 17, 1978 which was filed on behalf of workers and former workers producing women's casual footwear (including clogs) and boots at Tiara Footwear, Inc., Dover, N.H.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-59). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officals of Tiara Footwear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's and misses' nonrubber footwear (excluding athletic footwear) decreased from 218.9 million pairs in 1976 to 204.4 million pairs in 1977 and increased from 107.6 million pairs during the first half of 1977 to 111.4 million pairs during the first half of 1978. The ratio of imports to domestic production increased from 127.6 percent in 1976 to 134.6 percent in 1977.

A Department survey was conducted with major customers of Tiara Footwear, Inc. The survey revealed that two customers, representing the preponderance of Tiara's sales, increased purchases of women's and misses' nonrubber footwear from foreign sources, and decreased purchases from Tiara Footwear, from 1976 to 1977 and during the first three quarters of 1978 compared to the same period in 1977.

Tiara Footwear, Inc., was certified by the U.S. Department of Commerce as eligible to apply for trade adjustment assistance on December 14, 1977 (F-184).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and misses' nonrubber footwear (excluding athletic footwear) produced at Tiara Footwear, Inc., Dover, N.H., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the act, I make the following certification:

"All workers at Tiara Footwear, Inc., Dover, N.H. who became totally or partially separated from employment on or after November 26, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36171 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4271]

UNITED STATES STOVE CO. FOUNDRY, SOUTH PITTSBURG, TENN.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4271: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 17, 1978 in response to a worker petition received on October 17, 1978 which was filed by the International Molders and Allied Workers Union on behalf of workers and former workers producing castings for coal and wood stoves at the South Pittsburg, Tenn. foundry of the U.S. Stove Co.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50271). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the U.S. Stove Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of gray, white and ductile iron castings increased 29.8 percent from 1976 to 1977, from 104.2 thousand short tons in 1976 to 135.2 thousand short tons in 1977. These imports increased 5.7 percent the first three quarters of 1978 (114.9 thousand short tons) compared to the same period of 1977 (108.7 thousand short tons). The ratio of imports to U.S. production of gray, white and ductile iron castings increased from 1.5 percent in 1976 to 1.9 percent in 1977, and remained 2.0 percent during the first three quarters of 1978, compared to the same period of 1977.

The U.S. Stove Co. began importing castings for coal and wood stoves in September of 1978. The company plans to import all their castings in the future and close down the foundry permanently by December 31, 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with castings for coal and wood stoves produced at the South Pittsburg, Tenn. foundry of the U.S. Stove Co. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the U.S. Stove Co. Foundry, South Pittsburg, Tenn. engaged in employment related to the production of castings for coal and wood stoves who became totally or partially separated from employment on or after October 14, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36172 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4257]

VOLCO BRASS AND COPPER CO., KENILWORTH, N.J.

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-4257: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 6, 1978 which was filed by the United Steelworkers of America Union on behalf of workers and former workers producing brass and copper products.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Volco Brass and Copper Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Total sales and production of brass and copper products increased in 1977 compared with 1976 and continued to increase in the first three quarters of 1978 compared with the like period in 1977.

Conclusion

After careful review, I determine that all workers of Volco Brass and Copper Co., Kenilworth, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36173 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4109]

WESTINGHOUSE ELECTRIC CORP., LIGHTING DIVISION, CLEVELAND, OHIO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4109: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 22, 1978 in response to a worker petition received on August 18, 1978 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing outdoor lighting fixtures at Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39458-39459). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Westinghouse Electric Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of outdoor lighting fixtures and components increased in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

In mid-1976, Westinghouse began transferring final assembly of outdoor lighting fixtures to a Westinghouse plant in Vicksburg, Miss. A significant

portion of the production of components for the fixtures was transferred to a Westinghouse plant located offshore.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with outdoor lighting fixtures produced at Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

"All workers of Westinghouse Electric Corp., Lighting Division, Cleveland, Ohio who became totally or partially separated from employment on or after August 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 19th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-36174 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-4325]

WILLIS AND PAUL CORP., WIND GAP, PA.

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-4325: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 31, 1978 in response to a worker petition received on October 31, 1978 which was filed by Local 666 of the International Association of Bridge, Structural and Ornamental Workers on behalf of workers and former workers producing fabricated structural steel at the Willis and Paul Corp., Wind Gap, Pa. The investigation revealed that the plant primarily fabricates trestles and channels for conveyor systems.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51865). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Willis and Paul Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of investigation indicated the U.S. imports of fabricated trestles and channels for conveyor systems are insignificant.

Any imports of fabricated trestles and channels would be classified in the import category fabricated structural steel. Information developed by the Department of Labor indicates that most imports in this category are fabricated structural steel for buildings, roads, bridges and transmission towers. The Department of Labor has not been able to develop any evidence of imports of fabricated trestles and channels for conveyor systems.

Conclusion

After careful review, I determine that all workers of the Willis and Paul Corporation, Wind Gap, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc.78-36175 Filed 12-28-78; 8:45 am]

[4510-28-M]

[TA-W-3995]

YOUTHFUL FOUNDATIONS, INC., NEW YORK, N.Y.

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-3995: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 25, 1978 in response to a worker petition received on July 10, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workets and former workers producing brassiere parts at Youthful Foundations, Inc., New York, New York. The investigation revealed that the company produces bust cups.

The Notice of Investigation was published in the FEDERAL REGISTER on August 1, 1978 (43 FR 33840-41). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Youthful Foundations, Inc., the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The loss in export sales accounted for all of the decline in production at the subject firm from 1976 through the first six months of 1978. Industry sources indicate that imports of bust cups are negligible.

Conclusion

After careful review, I determine that all workers of Youthful Foundations, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-36176 Filed 12-28-78; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

DECEMBER 20, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in the first floor conference room, from 9 a.m. to 5:30 p.m. on January 15, 1979.

The purpose of the meeting is to review NEH Special Projects applications submitted to the National Endowment for the Arts and Humanities for projects beginning after February 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-36247 Filed 12-28-78; 8:45 am]

[7537-01-M]

MUSIC ADVISORY PANEL (COMPOSER/LIBRETTIST SECTION)

Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composer/Librettist Section) to the National Council on the Arts will be held on January 25, 1979, from 9:30 a.m.—5:30 p.m.; January 26, 1979, from 9:30 a.m.—5:30 p.m.; January 27, 1979, from 9:30 a.m.—5:30 p.m.; January 28, 1979, from 9:30 a.m.—5:30 p.m.

A portion of this meeting will be open to the public on January 26, 1979, from 1:30 p.m.—5:30 p.m. for a discussion on Guidelines.

The remaining sessions of this meeting on January 25, 1979, from 9:30 a.m.—5:30 p.m.; January 26, 1979, from 9:30 a.m.—1:30 p.m.; January 27, 1979, from 9:30 a.m.—5:30 p.m.; January 28, 1979, from 9:30 a.m.—5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

DECEMBER 20, 1978.

[FR Doc. 78-36236 Filed 12-28-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-254]

COMMONWEALTH EDISON CO. AND IOWA-ILLINOIS GAS & ELECTRIC CO.

Proposed Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-29, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company (the licensee), for operation of the Quad Cities Nuclear Power Station, Unit No. 1, located in Rock Island County, Illinois.

The amendment would allow the operation of Quad Cities Unit No. 1 during operating Cycle 5 with a fuel type not previously used in that facility in accordance with the licensee's application for amendment dated November 20, 1978. The fuel type has been reviewed and approved by the NRC staff for use in BWR 3 reactors.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 29, 1979, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-

6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Thomas Ippolito: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. John W. Rowe, Isham, Lincoln, Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.712(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the application for amendment dated November 20, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Moline Public Library, 504-17th Street, Moline, Illinois 61265.

Dated at Bethesda, Maryland this 20th day of December 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-35944 Filed 12-28-78; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

Meeting

The ACRS Subcommittee on Emergency Core Cooling will hold an open meeting on January 16, 1979 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555 to review NRC licensing activities related to the proposed revision of Appendix K, 10 CFR 50, the NRC audit of Code Quality Assurance Programs, the Standard Problem Program, a semiscale small break test, and other items of current interest. Notice of this meeting was announced December 20, 1978 (43 FR 59447).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Tuesday, January 16, 1979, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 22, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-36288 Filed 12-28-78; 8:45 am]

[7590-01-M]

AGREEMENTS FOR COOPERATION BETWEEN THE STATE OF INDIANA AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION

The Commission, in mid-January 1976 adopted a 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 Federal Water Pollution Control Act.

Although considerable latitude is provided, generally such agreements embody the principles of the Second Nuclear Regulatory Commission/Environmental Protection Agency Memorandum of Understanding (NRC/EPA) (F.R. Vol. 40, No. 251, p 60115 ff, December 31, 1975) for cooperation in the licensing of nuclear power plants.

To date, five such agreements have been consummated. Three of these agreements, those with the Virginia State Water Control Board, the New York State Board on Electric Generation Siting and the Environment and the Departments of Environmental Conservation and Public Service, and the State of South Carolina were published in the FEDERAL REGISTER, Vol. 43, No. 88, p 19485 ff, on May 5, 1978.

The fourth, a very broad agreement entitled "Memorandum of Agreement Between the State of Washington and the U.S. Nuclear Regulatory Commission," became effective on September 6, 1978. This agreement applies to all nuclear facilities subject to licensing by NRC or certification by the State; it applies to matters beyond water quality. The text of this Agreement was published in the FEDERAL REGISTER, Vol. 43, No. 188, p 43774 ff, on September 27, 1978.

The fifth is also a very broad agreement similar to that between the State of Washington and is entitled "Memorandum of Agreement Between the State of Indiana and the U.S. Nuclear Regulatory Commission." This agreement is intended to provide the basis for subsequent detailed subagreements between the parties in areas of mutual concern. The first such subagreement has also been consummated; it is entitled "Agreement Between the Indiana Environmental Management Board and the U.S. Nuclear Regulatory Commission Pursuant to the Federal Water Pollution Control Act, as amended (FWPCA)." Both the Agreement and the Subagreement became effective when signed in Indianapolis on December 14, 1978; the text of both is published below.

FOR FURTHER INFORMATION CONTACT:

Frank W. Young, Office of State Programs, telephone 301-492-7794, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 21st day of December 1978.

For the Nuclear Regulatory Commission.

ROBERT G. RYAN,
Director,
Office of State Programs.

MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF INDIANA AND THE U.S. NUCLEAR COMMISSION

This Memorandum of Agreement between the State of Indiana (hereafter "State") and the U.S. Nuclear Regulatory Commission (hereafter "NRC") expresses the desire of the parties to cooperate in the regulation of nuclear activities; it sets forth mutually agreeable principles of cooperation between the State and NRC in areas subject to the jurisdiction of the State or the NRC or both. This agreement is intended to provide the basis of subsequent detailed subagreements between the parties.

Close cooperation between the signatories will help assure that the goals and policies of State and Federal law will be carried out efficiently and expeditiously.

With the execution of this Memorandum, the State and NRC agree to consult regularly and cooperate in exploring and devising appropriate procedures to minimize, to the extent possible, duplication of effort and to avoid delays in decisionmaking so that effective use will be made of the resources of the State and NRC.

PRINCIPLES OF COOPERATION

1. The State and NRC agree to explore together the development of detailed subagreements in areas of mutual concern, including environmental reviews (or portions thereof) of nuclear facilities[1] subject to licensing; confirmatory radiological environmental monitoring around operating nuclear facilities; decommissioning of nuclear facilities; emergency preparedness planning; response to radiological incidents; and radioactive material transporting monitoring.

2. Subparagraphs under this Memorandum may provide for activities to be performed by either party under mutually acceptable guidelines and criteria which assure that the needs of both are met.

3. For activities performed by one party at the request of the other party under specific subagreements to this Memorandum, the party making the request will explore means by which compensation may be made available to the other party or by which the costs may be shared by the parties.

4. NRC agrees to explore with the State the possibility of sharing of proprietary information in NRC's possession with the State.

5. Each party will explore means by which its training programs may be made available to the other party.

6. Nothing in this Memorandum is intended to restrict or extend the statutory authority of either NRC or the State.

7. The principal NRC contact under this Memorandum shall be the Director of the Office of State Programs. The principal State contact shall be the Technical Secretary of the Environmental Management Board. Subagreements will name appropriate individuals, agencies or offices as contacts.

8. This Memorandum shall take effect immediately upon signing by the Governor of the State and the Chairman of the Nuclear Regulatory Commission, and may be terminated upon 30 days written notice by either party.

Dated at Indianapolis, Indiana, this 14th day of December 1978.

For the State of Indiana.

OTIS R. BOWEN,
Governor.

Dated at Washington, D.C., this 21st day of November 1978.

For the United States Nuclear Regulatory Commission.

JOSEPH M. HENDRIE,
Chairman.

AGREEMENT BETWEEN THE INDIANA ENVIRONMENTAL MANAGEMENT BOARD AND THE U.S. NUCLEAR REGULATORY COMMISSION PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED (FWPCA)

The State of Indiana, hereinafter referred to as the State, is a permit issuing State under Section 402 of the Federal Water Pollution Control Act, as amended (FWPCA). 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, as amended (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* of the following plants or facilities within Indiana:

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,
f. Uranium milling plants, and
g. Uranium hexafluoride conversion plants.

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* 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 (5 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

[1] For the purpose of this Memorandum of Agreement, the term nuclear facilities is defined to include the following plants or facilities within Indiana: 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; f. uranium milling plants; and g. uranium hexafluoride conversion plants.

*See 10 CFR Part 2, Subpart F and Appendix A, Paragraph I(c).

*The term "commencement of construction" means commencement of construction as defined to 10 CFR 50.10(c), 30.4(w), 40.4(n) and 70.4(s), as applicable.

completion of NRC's environmental review.**

4. The State will work closely with NRC to assure that water quality certifications 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, on 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 Technical Secretary of the Environmental Management Board or his designee.

8. Nothing in this Agreement is intended to restrict the statutory authority of either NRC or the State. Nothing in this Agreement affects any authority of the State under the Clean Air Act, as amended.

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 Washington, D.C. this 21st day of November, 1978.

For the United States Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

Dated at Indianapolis, Indiana, this 1st day of December, 1978.

For the Indiana Environmental Management Board.

RALPH C. PICKARD,
Technical Secretary of the Environmental Management Board.

[FR Doc. 78-36300 Filed 12-28-78; 8:45 am]

**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.

[7590-01-M]

[Docket Nos. STN 50-592 and STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

Reconstitution of Board

Commissioner Victor Gilinsky is hereby designated to replace Gustave A. Linenberger as a member of the Atomic Safety and Licensing Board in this proceeding. Commissioner Gilinsky's address is U.S. Nuclear Regulatory Commission (Room H-1149), Washington, D.C. 20555.

*It is so ordered.**

Dated at Washington, D.C., this 22d day of December, 1978.

For the Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-36291 Filed 12-28-78; 8:45 am]

*Commissioner Gilinsky did not participate in the Commission's vote on this order, and he will not participate in any future Commission reviews in this proceeding. Commissioner Gilinsky intends to participate as a member of the Licensing Board through that Board's initial decision.

[7590-01-M]

[Docket Nos. 50-237 and 50-249]

COMMONWEALTH EDISON CO.

Granting of Relief from ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Commonwealth Edison Company. The relief relates to the inservice inspection (testing) program for the Dresden Nuclear Power Station, Unit Nos. 2 and 3 (the facilities) located in Grundy County, Illinois. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief is granted, on an interim basis, pending completion of our detailed review, from those inservice inspection and testing requirements of the ASME Code that the licensee has determined to be impractical within the limitations of design, geometry, and materials of construction of components, because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirments 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 letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief 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 this action.

For further details with respect to this action, see (1) the request for relief dated July 31, 1978, and (2) the Commission's letter to the licensee dated December 20, 1978.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 20th day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-36292 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 66, 66 and 63 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 located in Oconee County, South Carolina. The

amendments are effective as of the date of issuance.

The amendments revise the Station's common Technical Specifications to support the operation of Oconee Unit No. 2 at full rated power during Cycle 4 after core reload and removal of the orifice rod assemblies from the core. These amendments also revise the Technical Specifications for Units 1, 2 and 3 in regard to control rod operability.

The application for the amendments 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 amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments 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 these amendments.

For further details with respect to this action, see (1) the application for amendments dated September 18, 1978, as supplemented September 25, and November 1, 1978, (2) Amendments Nos. 66, 66 and 63 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, 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 Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For the Nuclear Regulatory Commission.

GERALD B. ZWETZIG,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-36293 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Docket No. 50-270]

DUKE POWER CO. (OCONEE NUCLEAR STATION UNIT NO. 2)

Exemption

I.

Duke Power Company (the licensee) is the holder of Facility Operating License No. DPR-47 which authorizes the operation of the nuclear power reactor known as Oconee Nuclear Station, Unit No. 2 (the facility), at steady reactor power levels not in excess of 2568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Oconee County, South Carolina.

II.

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 9, 1975 an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR Part 50.46, and Appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200°F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Oconee Nuclear Station Unit No. 2 has an ECCS configuration which consists of two HPI trains which are supplied by three HPI pumps. Each train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. The two parallel HPI trains are connected but are kept isolated by manual valves (known as the cross-over valves) that are normally closed.

Duke Power has proposed by letter dated April 21, 1978, to maintain all three pumps in a operable status. The Oconee emergency power system is designed with sufficient capacity for this mode of operation. Upon receiving a safety injection signal the HPI pumps are started and valves in the injection lines are opened. Assuming loss of offsite power and the worst single failure (the HPI pump C or the HPI valve HP26), two HPI pumps would still be available and only one of the two injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about 50% of the output of two high pressure pumps) could flow out the break. Therefore, for the worst combination of break location and single failure, 50% of the flow rate of two high pressure ECCS pumps would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in the pump discharge line and have determined that to meet the limits of 10 CFR 50.46(b), operator action is required to open the two manual operated crossover valves and to manually align the motor driven isolation valve which had failed to open. This would allow the flow from the two HPI pumps to feed all four reactor coolant legs. B&W has assumed that 30% of the flow would be lost through the break and 70% would enter the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within five minutes and have them fully opened and an adequate flow split obtained within the following 10 minutes. The analyses peformed by B&W asumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has prepared a summary entitled "Analysis of Small Breaks in the Reactor Coolant Pump Discharge

Piping for the B&W Lowered Loop 177 FA Plants," April 24, 1978 (the B&W Summary), which describes the methods used and the results obtained in the above analysis. The analysis models operator action by assuming a step increase in flow to the reactor vessel (with balanced flow in the three intact loops) ten minutes after the LOCA reactor protection system trip signal occurs.

On April 26, 1978, the Commission issued an Order for Modification of License which amended the license for Oconee Unit 2 requiring (1) submission of a reevaluation of the emergency core cooling system calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in the licensee's letter of April 21, 1978 and (2) operation in accordance with the procedures described in the licensee's letter of April 21, 1978.

By letter dated May 16, 1978, the licensee submitted a copy of the B&W Summary for our review. In their submittal the licensee stated that the analysis indicates that the ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operation of Oconee units at the rated core thermal power of 2568 Mwt with operating procedures described in their letter of April 21, 1978, is wholly in conformance with the provisions of 10 CFR 50.46. We have reviewed the B&W Summary and find that the methods of analysis meet the requirements of 10 CFR Part 50.46.

By letter dated April 20, 1978 and as supplemented on April 27, 1978, the licensee submitted proposed Technical Specifications to implement the operating procedures and maintenance of all three HPI pumps in an operable status as described in the licensee's April 21, 1978 letter. We have issued these Technical Specifications in a license amendment dated October 23, 1978.

In the licensee's submittal of June 8, 1978, it was stated that to meet the limits of 10 CFR 50.46, operator action at the valve locations is required to open High Pressure Injection (HPI) Pump B-C discharge header cross over valves (HP-116 and HP-117) and the HPI injection line A engineering safeguards valve (HP-26) within 10 minutes.

Reliance on local operation of valves this soon after the onset of a loss-of-coolant accident is not desirable on a permanent basis. The licensee has requested an exemption from the requirements of 10 CFR 50.46 by letter dated September 18, 1978, for operation at Oconee 2 during Cycle 4 until such time as a permanent solution to this problem can be implemented.

The original concern derived from an unexpected but nevertheless inadequate assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, combined reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and will be replaced as promptly as possible by returning the system to simple control room actuation. To this extent, the original defect still remains until the modifications are made to eliminate the reliance on prompt operator actions.

We have reviewed the effects of changes made to the facility during the current refueling outage and have concluded that operation of Oconee Unit 2 at power levels of up to 2568 Mwt and in accordance with the Technical Specifications will assure that the ECCS system will conform to the performance criteria of 10 CFR 50.46. Accordingly, until modifications are completed to achieve full compliance with 10 CFR 50.46, operation of the facility at power levels up to 2568 Mwt with appropriate operating procedures will not endanger life or property or the common defense and security.

By letter dated July 14, 1978, the licensee submitted a proposed modification to the HPI system to eliminate the need for operator action outside the control room. Based on our review and Safety Evaluation, dated December 13, 1978, of the licensee's July 14 submittal we concluded that upon installation of the modification and upon completion of testing to verify the required flow split, the emergency core cooling system will fully conform to the requirements of 10 CFR 50.46. The Evaluation provides a description of the modification. While Oconee Unit No. 2 does not comply with our requirements for ECCS, appropriate actions, as previously described, have been taken to mitigate the consequences of any accidents at this plant. The Technical Specifications will provide protection against the subject small break LOCA and will bring plant operation wholly in conformance with 10 CFR 50.46. These Technical Specifications will be in force only for the brief interval of time until the proposed modifications of the ECCS are completed. The public interest is served in that by issuing this exemption for Unit No. 2 a significant power reduction with no concommitant increase in safety is avoided. Such a power reduction could affect system reliability, cause unemployment and increase consumer power costs in the area.

III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, South Carolina.

(1) The application for exemption dated September 18, 1978, and

(2) This Exemption in the matter of Duke Power Company, Oconee Nuclear Station, Unit No. 2.

IV.

Wherefore, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Oconee Unit 2 this exemption supersedes the conditions of the Commission's Order for Modification of License dated April 26, 1978, and is conditioned as follows:

(1) The licensee has submitted the plans and schedules to modify the facility to eliminate reliance on prompt operator action described herein. Additional guidance in these areas has been provided by the NRC letter of September 26, 1978 to Duke Power Company. The staff approved the modification by letter dated December 13, 1978.

(2) The licensee shall complete such modifications prior to startup after the next scheduled refueling outage or during any scheduled outage of sufficient duration and occuring after six months from December 13, 1978 whichever occurs first.

(3) This exemption shall be terminated upon completion of the modifications in accordance with the conditions above.

Dated at Bethesda, Maryland this 15th day of December 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Regulation.

[FR Doc. 78-36294 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Docket No. 70-2623]

DUKE POWER CO.

Negative Declaration Regarding Proposed Amendment to Materials License SNM-1773

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Materials License No. SNM-1773 issued to Duke Power Company. The proposed amendment would authorize the receipt and storage of Oconee Nuclear Station spent fuel at the McGuire facility located in Mecklen-

burg County, North Carolina, in accordance with the licensee's application for amendment dated March 9, 1978. Notice of proposed issuance of this amendment to Materials License SNM-1773 offering an opportunity for public participation in connection with this action was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32905). In response to Petitions filed for Leave to Intervene, hearings will be held pursuant to 10 CFR Part 2. This will be the subject of a separate notice and will be published in the FEDERAL REGISTER at a later date.

The U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, has prepared an environmental impact appraisal in accordance with 10 CFR Part 51 for the proposed amendment and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact significantly affecting the quality of the human environment attributable to the proposed action. A negative declaration to this effect is appropriate.

The Environmental Impact Appraisal dated December 1978, and the application for amendment dated March 9, 1978, are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local Public Document Rooms at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, N.C. 28202, and at the Oconee County Library, 201 South Spring Street, Walhalla, S.C. 29691. The Safety Evaluation Report (when available) will also be open for public inspection at the above locations. Copies of the Environmental Impact Appraisal and the Safety Evaluation Report may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 22nd day of December 1978.

For the Nuclear Regulatory Commission.

L. C. ROUSE,
Acting Chief, Fuel Reprocessing and Recycle Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 78-36295 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Docket No. 50-335]

FLORIDA POWER AND LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. DPR-67 issued to Florida Power & Light Company (the licensee), which revised Technical Specifications for operation of St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Fla. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to increase the minimum required volume of water in the Refueling Water Tank and to allow an increase in the coolant temperature at which shutdown cooling is initiated.

The applications for the amendment comply 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 the issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated February 24 and 27, 1978, (2) Amendment No. 28 to License No. DPR-67, 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 Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Fla. 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 14th day of December 1978.

For the Nuclear Regulatory Commission.

GERALD B. ZWETZIG,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-36296 Filed 12-28-78; 8:45 am]

[7590-01-M]

Atomic Safety and Licensing Appeal Board

[Docket Nos. STN 50-556 and STN 50-557]

PUBLIC SERVICE CO., ET AL.

Order

DECEMBER 22, 1978.

In the matter of Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative, Inc. (Black Fox Station, Units 1 and 2).

The Board will hear argument in this case at 10 a.m. Wednesday, January 31, 1979, in the Commission's Public Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland. The time allotted for presentation of argument and notice of matters which the Board particularly wishes addressed will be announced subsequently. Each party shall write the Board Secretary by January 17, 1979, giving the name, address and telephone number of counsel who will present oral argument on its behalf.

It is so ordered.

For the Appeal Board.

ELEANOR E. HAGINS,
Secretary to the Appeal Board.

[FR Doc. 78-36297 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-522 and 50-523]

PUGET SOUND POWER AND LIGHT CO., ET AL. (SKAGIT NUCLEAR POWER PROJECT, UNITS 1 AND 2)

Order for Conference

The board is hereby calling a conference of counsel for all of the parties, including intervenors, for Tuesday and Wednesday, January 16 and 17, 1979, beginning each day at 9:30 a.m. The conference will be held at Room 3086, New Federal Building, 915 Second Avenue, Seattle, Washington 98174.

The purpose of the conference is to take stock of the status of the proceeding, to facilitate planning for the next steps in the proceeding by the parties and the board, and to provide orientation to the board's new chairman. The board is conscious of the lapsed time since the beginning of the proceeding and the extensive evidentiary hearings which have already

taken place and is determined to move ahead to a conclusion of the proceeding with all deliberate speed.

So that the conference may be of maximum benefit, counsel for each party is requested to submit to the board, in specific terms, a list of the principal issues, together with major subordinate issues thereunder, which require board decision. The list of principal issues should be divided into three categories according to submitting counsel's opinion, namely, (1) issues presently ripe for board decision with no need for further evidentiary hearing; (2) issues on which further evidentiary hearing is required before board decision is appropriate; and (3) issues on which no evidentiary hearings have been held. Citations to the record of evidence on each principal or major subordinate issue about which there has been evidence of record should be included in the listing of issues.

Counsel for the new intervenors, namely, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Tribal Community are requested to define with reasonable specificity the contentions within the scope of the present proceeding which they wish to be adjudicated by the board. The enumeration of such contentions should include citations of evidence pertinent thereto which may already be in the record of the proceeding.

The foregoing requested material should be forwarded to the members of the board so that it may be in the hands of the board members on or before Wednesday, January 11, 1979.

On Thursday, January 18, 1979, the board members anticipate a visit to the proposed plant site with the applicant as their host. Representatives of parties may join the visit but there is no requirement for doing so. Arrangements for the visit will be discussed at the scheduled conference.

The mailing addresses and telecopy communication terminals of the board members are:

Mr. Gustave A. Linenberger, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, FTS-8-634-3319 or (202) 634-3319. For verification of receipt of telecopied messages, either of above numbers with last four numerals changed to 3317.

Dr. Frank F. Hooper, School of Natural Resources, University of Michigan, Ann Arbor, Michigan 48109, Telex or TWX 810-223-6056. For verification of receipt of telecopied messages, (313) 764-7235.

Valentine B. Deale, Esq., Suite 504, 1001 Connecticut Avenue NW., Washington, D.C. 20036, (202) 331-1243. For verification of receipt of telecopied messages, (202) 296-8100 and ask for Miss Martha Moody.

Dated this 22nd day of December 1978 at Washington, D.C.

ATOMIC SAFETY AND LICENSING BOARD.
VALENTINE B. DEALE,
Chairman.

[FR Doc. 78-36298 Filed 12-28-78; 8:45 am]

[7590-01-M]

[Docket No. 50-397 OL]

WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 2)

Order Relative to a Prehearing Conference

Take notice, because of scheduling problems, the date of the prehearing conference to consider petitions filed in this proceeding has been changed from January 11, 1979 to January 25, 1979. The place of the hearing is as follows: Federal Building, Auditorium, 825 Jadwin Avenue, Richland, Washington.

The proceeding will commence at 9 a.m. (local time). The public is invited to attend. No limited appearance statements will be heard at this particular conference.

It is so ordered.

Dated at Bethesda, Maryland, this 20th day of December, 1978.

For the Atomic Safety and Licensing Board for the Review of Petitions.

RICHARD F. COLE,
Member.

[FR Doc. 78-36299 Filed 12-28-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its reiew of applications for permits and licenses.

The new guide is Regulatory Guide 3.44, "Standard Format and Content for the Safety Analysis Report To Be Included in a License Application for The Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (Water-Basin Type)." It identifies for the applicant the information needed in a Safety Analysis Report to evaluate the safety aspects of the proposed independent spent fuel storage installation (ISFSI) and the plans for its use. Review of this information in applications for licenses for the storage of spent fuel in an ISFSI in accordance with proposed 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation," should enable the NRC staff to provide reasonable assurance that the installation will not adversely affect the health and safety of the public and its operating personnel. The proposed regulation was published in the FEDERAL REGISTER on October 6, 1978 (43 FR 46309).

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 3.44 will, however, be particularly useful in evaluating the need for an early revision if received by February 28, 1979.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 21st day of December 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director
Office of Standards Development.

[FR Doc. 78-36290 Filed 12-28-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and budget on December 20, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The title of each request received;

The name of the agency sponsoring the proposed collection of information;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Report of First Sales of Natural Gas Under Section
109 of the Natural Gas Policy Act, Other Categories of Natural Gas
FERC-122
Annually
Natural Gas Companies
100 responses; 25 hours
Hill, Jefferson B., 395-5867

Industrial Energy Consumption ID Survey
EIA-117
Single-Time
Major energy consuming firms
1,000 responses; 4,000 hours
Hill, Jefferson B., 395-5867

NATIONAL ENDOWMENT FOR THE ARTS

Application Form for Listing in NEA/Artists-in-Schools
Theatre Resources Directory
Annually
Theatre artists and theatre companies
100 responses; 50 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control
Nosocomial Infection Surveillance and Control Practices
Single-Time
Hosp. partici. in nat. nosocomial infections study
85 responses; 170 hours
Richard Eisinger, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development and Research
Community Development Block Grant Evaluation: First Year Household Survey
Single-Time
Households in 10 cities
5,000 responses; 2,500 hours
Strasser, A., 395-6132

DEPARTMENT OF LABOR

Employment and Training Administration
Monthly Enrollment Levels of On-Board PSE CETA Participants
ETA-17
Monthly
State and local agencies
5,520 responses; 1,380 hours
Budget Review Division, 395-4775

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service
Summer Food Service Program for Children
FNS-80
On occasion
State agencies and service instit. (sponsors)
11,788 responses; 23,138 hours
Ellett, C. A., 395-6132

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Education Application for Comprehensive Program of the Fund for the Improvement of Postsecondary Education
ASE-0001, 0002, 0003
Annually
Postsecondary education institutions
2,500 responses; 66,000 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF LABOR

Employment and Training Administration
The Job Corps Health Management Information System MA 6-124, 125, 127, 128
Monthly
Job Corps centers health units
1,116 responses; 1,736 hours
Strasser, A., 395-6132

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
Federal-Aid Highway Construction Contractor's Annual EEO Report
PR-1391
On occasion
Highway construction contractors and subcontractors
3,700 responses; 13,000 hours
Geiger, Susan B., 395-5867

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Farmer's Home Administration
Farm and Home Plan
FHMA 431-2
On occasion
FHA loans
125,000 responses; 125,000 hours
Ellett, C. A., 395-6132

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development
National Study on Selected Issues of Social Services to Children and Their Families
Single-Time
Public child welfare agencies
11,480 responses; 5,740 hours
Reese, B. F., 395-3211

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration
FAA Landing Facilities Information Request on Airports, Heliports, Seaplane Bases and Stolports FAA 5010-2 and 5010-5
On occasion
Owners of airports not open to the public
8,000 responses; 2,750 hours
Geiger, Susan B., 395-5867

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-36328 Filed 12-28-78; 8:45 am]

[8410-01-M]

OHIO RIVER BASIN COMMISSION

OHIO MAIN STEM WATER AND RELATED LAND RESOURCES STUDY REPORT AND ENVIRONMENTAL IMPACT STATEMENT

Availability of Adopted Study Report and Associated Plans and Associated Comprehensive Coordinated Joint Plans (CCJP's) for the Upper Ohio Main Stem, Middle Ohio Main Stem and Lower Ohio Main Stem Portions of the Ohio River Basin

Pursuant to Section 204(3) of the Water Resources Planning Act of 1965 (PL 89-80), the Ohio River Basin Commission has adopted the Ohio Main Stem Water and Related Land Resources Study Report and Environmental Impact Statement and associated Comprehensive Coordinated Joint Plans (CCJP's) for the Upper Ohio Main Stem, Middle Ohio Main Stem and Lower Ohio Main Stem major portions of the Ohio River Basin for transmittal to the President and the Congress through the Water Resources Council.

Copies are available on request from the Ohio River Basin Commission, 36 E. Fourth Street, Cincinnati, Ohio 45202.

For the Ohio River Basin Commission:

FRANK M. ALEXANDER,
Vice-Chairman.

[FR Doc. 78-36237 Filed 12-28-78; 8:45 am]

[1505-01]

Small Business Administration

[Declaration of Disaster Loan Area No. 1551]

LOUISIANA

Declaration of Disaster Loan Area

Correction

In FR Doc. 78-35435 appearing at page 59561 in the issue for Thursday, December 21, 1978 the Declaration of Disaster Loan Area was incorrectly stated as "551." It should be corrected to read "1551."

[4710-07-M]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/139]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Tuesday, January 16, 1979 in Room 8236/38, of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C.

The purpose of this meeting will be to review the Nineteenth and prepare for the twentieth Session of the Ship Design and Equipment Subcommittee of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for March 12-16, 1979 in London. The agenda includes consideration of the Delegation and Subcommittee reports for the Nineteenth Session and discussion of the following for the Twentieth Session: revision of IMCO Resolution A.325; special purpose ships/offshore supply vessels; noise level on board ships; maneuverability of ships; diving system; completion of the Code for Mobile Offshore Drilling Units; and nuclear merchant ships.

Requests for further information should be directed to Captain R. L. Brown, United States Coast Guard, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 426-2167.

The Chairman will entertain comments from the public as time permits.

Dated: December 18, 1978.

JOHN LLOYD, III,
Deputy Director,
Office of Maritime Affairs.

[FR Doc. 78-36238 Filed 12-28-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/140]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on bulk chemicals of the Subcommittee of Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on January 18, 1979 in Room 8238 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of this meeting will be to discuss the agenda for the fifth session of the IMCO Subcommittee on Bulk Chemicals. Agenda items of particular importance include:

Extension of the Bulk Chemical Code to cover pollution aspects.

Provision of reception facilities for noxious liquid substances.

Procedures and arrangements for the discharge of noxious liquid substances.

Ships used for carrying substances under Annex I and Annex II of the 1973 MARPOL Convention.

Evaluation of the hazards of mixed or diluted substances in relation to the Bulk Chemical Code and the 1973 MARPOL Convention.

Carriage of bulk chemicals in deep tanks of dry tanks of dry cargo ships.

Review and updating of the Gas Carrier Code.

Requests for further information on the meeting should be directed to Mr. F. Wybenga, United States Coast Guard, telephone (202) 426-1217.

The Chairman will entertain comments from the public as time permits.

Dated: December 20, 1978.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[FR Doc. 78-36268 Filed 12-28-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/141]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea (SOLAS), a part of the Shipping Coordinating Committee, will conduct an open meeting at 1:30 p.m. on Thursday, January 18, 1979 in Room 8442 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twentieth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 26-30, 1979. In particular, the working group will discuss the following topics:

Survival craft radio equipment.

Operational requirements for future EPIRBs.

Operational standard for shipboard radio equipment.

Maritime distress system.

Requests for further information should be directed to Lieutenant R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C., telephone (202) 426-1345.

The Chairman will entertain comments from the public as time permits.

Dated: December 20, 1978.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

[FR Doc. 78-36269 Filed 12-28-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application No. D-1007]

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Everybodys Inc. Employee Profit Sharing Plan and Trust

AGENCIES: Department of the Treasury/Internal Revenue Service. Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code) and from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the loan of $40,000 from the Everybodys Inc. Employee Profit Sharing Plan (the Plan) to Everybodys Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before January 29, 1979.

ADDRESS: All written comments and requests for a hearing (at least six

copies) should be sent to: Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attention: E:EP:PT:1, Application No. D-1007. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, NW, Washington, DC 20224, and at the public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW, Washington, DC 20216.

FOR FURTHER INFORMATION CONTACT:

Pete Knox of the Internal Revenue Service, 202-566-6761. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (B) through (E) of the Code, and from the restrictions of section 406(a)(1)(B) through (D) and section 406(b)(1) and 406(b)(2) of the Act. The proposed exemption was requested in an application filed by the Employer and the trustees of the Plan pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722 and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

1. The Employer owns and operates a pizza restaurant and another restaurant in Atlanta, Georgia. Andrew S. Kurlansky is the secretary-treasurer of the Employer, owns 50 percent of its outstanding common stock and is a trustee of the Plan's Trust (the Trust). Philip G. Paymer is the president of the Employer, owns 50 percent of its outstanding stock and is the other trustee of the Trust. The Employer has assets of $186,338, no long term liabilities and its retained earnings exceed $121,000.

2. The Plan had 37 participants as of June 30, 1978. The Trust had assets of $102,134 as of June 30, 1978, the end of the Plan's year. The Plan expects to receive further annual contributions of $12,000 to $15,000. Payments of Plan benefits during the period of the loan are expected to be negligible.

3. Andrew S. Kurlansky and Philip G. Paymer are responsible for all Trust investment decisions. The overall consideration in past investment decisions has been to find the highest yielding, most secure investments. Consequently, almost all of the Trust assets have been invested in United States government obligations and in certificates of deposit yielding between 7¼ and 7½ percent per year.

4. The Employer proposes to borrow $40,000 from the Trust, to be repaid in 20 quarterly installments of $2,814.44, reflecting an annual interest rate of 14 percent. The loan will be on the same terms that would be offered by a major local bank (and will utilize standard local bank forms), except that the interest to be charged is approximately one to two percent more than a bank would require and, in addition, the loan will be personally guaranteed by Andrew S. Kurlansky (whose net worth as of December 31, 1977 is represented to be in excess of $162,000) and by Philip G. Paymer (whose net worth as of December 31, 1977 is represented to be in excess of $99,000). The loan will be evidenced by a negotiable promissory note and will be secured by new pizza restaurant equipment and fixtures worth approximately $91,820. The security interest will be perfected by filing a Uniform Commercial Code security agreement with the county clerk of the county where the fixtures will be situated. The collateral will be kept fully insured against fire, theft or other casualty, such insurance to inure to the benefit of the Trust. The Employer represents that the market value of the collateral is not expected to drop below approximately twice the outstanding loan balance due at any time. The Employer further represents that the collateral is easily resalable.

5. The Employer will appoint a local banker to be a separate loan trustee for the Trust assets involved in the proposed loan. The independent loan trustee will have the responsibility and power to enforce and collect the loan in the event of any default.

Notice to Interested Persons

Written notice shall be given to all interested persons. The interested persons include the Plan participants. The manner of the notice shall be by posting, on the employee's bulletin board that is regularly used to inform employees of important events, a copy of this notice of pendency as published in the Federal Register with explanatory notes attached summarizing the exemption requested, informing the interested persons of their right to comment on such exemption, and informing the interested persons of the period for comments to be received.

The notice shall be posted within 10 days after the notice of pendency of such exemption is published in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in the interest or disqualified person from certain other provisions of the Code and the Act, including any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposal exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 FR 22319).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a

hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. If the exemption is granted, the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) through (E) of the Code, and the restrictions of section 406(a)(1)(B) through (D) and 406(b)(1) and 406(b)(2) of the Act, shall not apply to the loan of $40,000 from the Trust to the Employer. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, DC, this 20th day of December, 1978.

FRED J. OCHS, *Director, Employee Plans Division, Internal Revenue Service.*

IAN D. LANOFF, *Administratior of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 78-35983 Filed 12-28-78; 8:45 am]

[4510-29-M]
[4830-01-M]

[Application No. D-654]

EMPLOYEE BENEFIT PLANS

Proposed Exemption to Certain Transactions Involving the Howell Instruments, Inc. Employee Profit Sharing and Retirement Plan

AGENCICES: Department of Labor. Department of Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption, if granted, would exempt the sale of shares of stock of Commerce Financial Corporation (CFC) from the Howell Instruments, Inc. Employee Profit Sharing and Retirement Plan (the Plan) to CFC. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, CFC and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor by January 29, 1979. The effective date of the proposed exemption will be the date on which the exemption is granted.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-654. The application for exemption, all comments relating to the proposed exemption, and any requests for a hearing will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216, and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Ronald D. Allen of the Department of Labor, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Bank of Commerce of Fort Worth, Texas (the Bank), the trustee of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicant.

The Plan is a profit sharing plan which holds 4,810 shares of CFC common stock. CFC is a bank holding company of which the trustee Bank is a wholly-owned subsidiary. The Bank as trustee requests an exemption in order to sell all shares of CFC stock held by the Plan to CFC. The proposed sale would be for a cash consideration of $59.00 per share. CFC would purchase the stock as treasury shares, without intention of any subsequent offering of the shares to the public.

The Plan originally purchased 4,810 shares of stock of the trustee Bank on May 9, 1972, which shares subsequently were exchanged for the 4,810 shares of CFC stock. The CFC stock represents 8.24 percent of the assets of the Plan, the largest single stock or bond holding in the Plan portfolio. CFC stock has a present yield of 2.69 percent annually, based on a dividend of $1.40 per share.

Sale of the CFC stock is sought since the trustee has determined that it is not desirable for the Plan to retain 8.24 percent of its investment portfolio invested in basically non-marketable assets with a low rate of return. In addition, the Plan's investment in the CFC stock violates the diversification guidelines set by the Bank with respect to its management of trust accounts. Furthermore, the Plan trustee believes that continued holding of CFC stock precludes alternative investment of Plan assets.

CFC stock is considered non-marketable since all issued and outstanding shares of such stock are held by only 183 shareholders. A majority of the stock is held by officers and directors of CFC. Because of this thin market for CFC shares, there are few potential purchasers for the stock held by the Plan. The CFC stock was acquired by the Plan from CFC without registration under the Securities Act of 1933 under an exemption therefrom. Therefore, the shares are restricted and cannot be sold without compliance with the registration requirements of the Securities Act of 1933, or in reliance upon an exemption therefrom. Any such registration would not be feasible because of costs which would be incurred, the limited number of shares involved, and the burden of developing all the necessary information required by the registration statement. If the Plan attempted to sell the CFC stock pursuant to a "private offering" exemption from registration, it is uncertain whether sufficient interest could be generated for the 4,810 CFC shares. Moreover, even if the stock could be sold in a private placement, the sale of CFC stock to individuals who are likely buyers probably would result in prohibited transactions

under the Act and the Code, because many of such individuals would be parties in interest and disqualified persons with respect to the Plan.

Shares of CFC stock are not actively traded. During 1977 there were seven trades involving a total of 1,756 shares. All seven trades were made by CFC at $49 per share. CFC has been the primary purchaser of CFC stock, doing so in order to create a reserve of treasury shares with which to fund a stock option program.

The proposed purchase price of $59.00 per share is represented to be the current fair market value of the stock. The price is based upon an independent appraisal made by Stephen's Inc., an investment banking firm which is completely independent of CFC. Stephen's Inc. was retained by CFC in September, 1976 to make such an appraisal, and updated its initial appraisal in April 1978.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be posted conspicuously in the administrative office of the Plan for at least thirty days, beginning within fifteen days after publication of the notice of pendency of exemption in the FEDERAL REGISTER. Additionally, copies of the FEDERAL REGISTER notice will be provided to all Plan participants by first class mail within fifteen days of such publication in the FEDERAL REGISTER.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representatives set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of 4,810 shares of Commerce Financial Corporation stock to Commerce Financial Corporation for $59.00 per share, provided that this amount is not less than fair market value of the stock at the time of the sale. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1978.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

FRED J. OCHS,
Director, Employee Plans Division Internal Revenue Service.

[FR Doc. 78-35981 Filed 12-28-78; 8:45 am]

[4510-29-M]
[4830-01-M]

[Application No. 0-672]

EMPLOYEE BENEFIT PLANS

Proposed Exemption for Certain Transactions Involving Rasmussen Equipment Company Profit Sharing Plan

AGENCIES: Department of Labor. Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale by the Rasmussen Equipment Company Profit Sharing Plan (the Plan) of real property to Rasmussen Investment, Ltd. (the Partnership), a party in interest. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Rasmussen Equipment Company (the Employer), the Partnership and other persons participating in the proposed transaction.

DATES: Written comments and request for a public hearing must be received by the Department of Labor on or before January 29, 1979. The exemption will be effective on the date of the final grant.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-672. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216, and at the Intenal Revenue Service National Office Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Ronald D. Allen of the Department of Labor, 202-523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of an application for exemption from the restrictions of section 406(a)(1) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Summary of Facts and Represenatations

The application and related documents contain facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to these documents on file with the Agencies for the complete representations of the applicants.

Richard and Robert Rasumussen each own a 50% interest in the Employer, which is the Plan sponsor. Richard is the administrator of the Plan and the person responsible for making investment decisions for the Plan. Richard and Robert Rasmussen are participants in the Plan and each owns a 50% interest in the Partnership, which was formed for the purpose of buying and developing real property.

The Plan owns to parcels of undeveloped real property in the Salt Lake Industrial Park (Industrial Park) which it purchased on September 1, 1973 for $105,863. All payments on the land were paid by the Employer with company checks, and the amounts were deducted by the Employer as contributions to the Plan. It was understood at the time the property was purchased that the Plan would construct a building on the property and that the land and the building would be leased to the Employer for its operations. As of June 30, 1977, the real property in the Industrial Park represented 52% of Plan assets. According to an independent appraisal dated March 7, 1977, the property was valued at $190,000.

The contract between the Plan and the Industrial Park contained a restrictive covenant requiring the Plan (as owner of the property) to commence construction of a building on the property within three years from September 1, 1973. The Plan may not sell the property prior to the construction of a building. If construction had not begun within that time period, the owners of the Industrial Park have an option to refund the purchase price plus interest and enter into possession of the property. This covenant is designed to remove the land from speculative sales without improvements and to assure development within a reasonable period of time.

When the Act became effective, the Plan was prohibited by the restrictions of the Act and the Code from leasing the property or the proposed building to the Employer. Because the property could not be sold to a third party prior to the construction of a building thereon because it could not be determined what type of building could be built and sold without incurring difficulties in the disposition it was decided that the Partnership should purchase the property from the Plan and lease the developed property to the Employer. The owners of the Industrial Park have agreed to allow the Plan to sell the land to the Partnership and have extended the deadline leaving the date open to begin construction on the property.

The sale of the property by the Plan to the Partnership is proposed to be for $190,000 cash.[1] The Plan will not pay a sales commission in connection with the sale.

Notice to Interested Persons

Notice of the proposed exemption will be posted conspicuously in the administrative office of the Plan for at least 30 days, beginning within 15 days of publication of the notice of pendency in the Federal Register. In addition, copies of the notice of pendency as published in the Federal Register will be provided to all Plan participants by first class mail within 15 days of publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for exclusive benefit of the employees of the employer maintaining the plan and of their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 FR 22319).

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the

[1] The price of $190,000 is based upon the independent appraisal referred to above. However, in view of the length of time which has passed since that appraisal was made, the proposed exemption provides that the Partnership must pay the greater of either $190,000 or the fair market value at the time of the sale.

Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of section 406(a)(1) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan to the Partnership of the real property located in the Industrial Park for $190,000, provided that this amount is not less than the fair market value of the property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1978.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

FRED J. OCHS, *Director, Employee Plans Division, Internal Revenue Service.*

[FR Doc. 78-35982 Filed 12-28-78; 8:45 a.m.]

[4810-22-M]

Office of the Secretary

BICYCLE TIRES AND TUBES FROM THE REPUBLIC OF CHINA

Determination of Sales at not Less Than Fair Value and Discontinuance of Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Not Less Than Fair Value and Discontinuance of Antidumping Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that, with the exception of the merchandise produced by two companies, bicycle tires and tubes from the Republic of China, are not being sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921. In the case of two producers the investigation is being discontinued based on minimal margins and assurances of no future sales at less than fair value.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On January 13, 1978, information was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), from counsel acting on behalf of the Carlisle Tire and Rubber Co., of Carlisle, Pennsylvania, indicating that bicycle tires and tubes from the Republic of China are being, or are likely to be, sold at less than fair value within the meaning of the Anitdumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of February 23, 1978 (43 FR 7496).

A "Withholding of Appraisement Notice, Tentative Exclusion From and Tentative Discontinuance of Antidumping Investigation" was published in the FEDERAL REGISTER of September 18, 1978 (43 FR 41451).

For purposes of this notice the term "bicycle tires and tubes" means pneumatic bicycle tires, and tubes therefor, of rubber or plastics, whether such tires and tubes are sold together as units or separately.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On the basis of information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)) I hereby determine that bicycle tires and tubes from the Republic of China, other than that merchandise produced by Cheng Shin Industrial Co., Ltd. and Kenda Rubber Tire Corp., are not being sold at less than fair value. In the case of both Cheng Shin Industrial Co., Ltd., and Kenda Rubber Tire Corp., the margins were found to be *minimal* and assurances of no future sales at less than fair value have been received. Therefore, with respect to these two firms, I hereby discontinue the antidumping investigation.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED:

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that approximately 86 percent of the imports of the subject merchandise from the Republic of China during the period of the investigation were manufactured by the following firms:

1. Hwa Fong Rubber Industrial Co., Ltd.
2. Cheng Shin Rubber Industrial Co., Ltd.
3. Kenda Rubber Tire Corp., Ltd.
4. Nan Kang Rubber & Industrial Corp., Ltd.

The investigation was therefore limited to sales by these four firms.

b. *Basis of Comparison.* For purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison, except for Nan Kang, is between purchase price and the adjusted home market price of such or similar merchandise. With respect to Nan Kang, the proper basis of comparison is between purchase price and third country price of such or similar merchandise. Purchase price, as defined in § 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States by the four firms were made to unrelated customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used for fair value purposes when such or similar merchandise was sold in the home market in sufficient quanitites to provide an adequate basis of comparison.

Sales for exportation to countries other than the United States, as defined in § 153.3, Customs Regulations (19 CFR 153.3), were used for Nan Kang since such or similar merchandise was not sold in the home market.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States, home market sales, and third country sales during the period September 1, 1977, through February 28, 1978.

c. *Purchase Price.* For purposes of this determination, purchase price has been calculated on the basis of sales prices to unrelated United States purchasers, and to trading companies in the Republic of China which export the merchandise to the United States, with deductions made, where applicable, for c.i.f. charges, inland freight charges, commissions, brokerage charges, bank charges and contributions to the Taiwan Rubber Association. An addition was made, where applicable, for duty drawback of Republic of China customs duty paid on imported material used to manufacture the tires and tubes exported to the U.S. during the investigatory period. Additions were also made for the amount of commodity, stamp and education taxes imposed on sales of this merchandise domestically, which taxes were either rebated or not col-

lected upon exportation. With regard to Cheng Shin it was discovered that inadvertently the adjustment for the commodity tax, discussed above, had been omitted from the fair value calculations used in the Withholding of Appraisement Notice. This adjustment has been included for purposes of this determination.

d. *Home Market Price.* For the purpose of this determination, the home market price has been calculated on the basis of the selling prices to unrelated purchasers in the Republic of China. Deductions were made, where applicable, for inland freight. Adjustments were made, where applicable, for differences in credit, packing and merchandise and for advertising expenses and rejected merchandise.

The adjustments for differences in credit related to the differences in interest costs incurred by the sellers due to differences in the time within which payment was received on sales in the home market as compared with export sales. The adjustment for differences in packing related to different costs associated with packing the merchandise for export and for home consumption. Those adjustments were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

The adjustments for differences in merchandise concerned sales by Cheng Shin. Those differences involved standard variances in tread and in color of sidewall on certain tires and in material on certain tubes sold both in the United States and in the home market. The adjustment factor was based upon the differences in the negotiated prices for the identical, differentiated tires and tubes sold in the home market. This adjustment was made in accordance with § 153.11 of the Customs Regulations (19 CFR 153.11).

The adjustment for advertising expenses was made in the case of Cheng Shin for certain advertising costs assumed by that manufacturer on behalf of its distributors. The adjustment for rejected merchandise concerned a deduction for merchandise returned by home market customers in the case of sales by two manufacturers, Cheng Shin and Hwa Fong. These manufacturers did not incur similar claims for rejected merchandise on sales to the United States. Accordingly, adjustments for the foregoing expenses were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

Claims were made for adjustments under § 153.10, Customs Regulations (19 CFR 153.10), for entertainment expenses and bad debt expenses incurred in the home market.

A claim for an adjustment based upon differences in the quantity sold in the two markets was made by Hwa Fong. However, the company did not provide any documentation to justify making the adjustment. Moreover, its prices did not appear to vary in direct relationship to quantities, as required under § 153.9(b) of the Customs Regulations (19 CFR 153.9(b)).

e. *Sales for Exportation to Countries Other Than the United States.* Since Nan Kang had no home market sales of such or similar merchandise to use as a basis of comparison with its exports to the United States, fair value was calculated on the basis of Nan Kang's export sales to the third country (Canada) in which the greatest number of Nan Kang's export sales to countries other than the United States were made. These sales were made from the same price list used for sales to the United States and in both cases actual sales prices appear to adhere to the price list.

f. *Results of Fair Value Comparisons.* Using the above criteria, the purchase price in certain instances was found to be lower than the home market price of such or similar merchandise. Comparisons were made on approximately 97 percent of the sales of the subject merchandise sold for export to the United States by the four investigated manufacturers during the period of investigation. Margins wer found on approximately 7 percent of the sales compared, ranging from 0.05 percent to 21.4 percent and resulting in a weighted-average margin of 0.48 percent. Weighted-average margins over the total sales compared for each firm are as follows: Cheng Shin 0.79 percent, Kenda 0.5 percent and Hwa Fong 0.23 percent. No margins found on sales made by Nan Kang. The margins found on sales by Hwa Fong are determined to be *de minimis.* The margins found on sales by Kenda and Cheng Shin are considered to be *minimal* in relation to total volume of exports and formal assurances have been received from those manufacturers indicating that all future sales to the United States will be at prices which are not less than fair value.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to section 153.40, Customs Regulations (19 CFR 153.40).

The order to withhold appraisement on the subject merchandise from the Republic of China, cited above and published in the FEDERAL REGISTER on September 18, 1978 (43 FR 41451), is hereby terminated, effective December 29, 1978.

This determination and discontinuance is being published pursuant to §§ 153.33(d) and 153.34(d) of the Customs Regulations (19 CFR 153.33(d), 153.34(d)).

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

DECEMBER 20, 1978.

[FR Doc. 78-36326 Filed 12-28-78; 8:45 am]

[4810-22-M]

BICYCLE TIRES AND TUBES FROM THE REPUBLIC OF KOREA

Antidumping; Determination of Sales at Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that bicycle tires and tubes from the Republic of Korea are being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of such or similar merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market. This proceeding is being referred to the United States International Trade Commission for a determination concerning injury to an industry in the United States.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Holly Kuga, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On January 13, 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 the Carlisle Tire & Rubber Co. of Carlisle, Pa. indicating a possibility that bicycle tires and tubes from the Republic of Korea are being, or are 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.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of February 23, 1978 (43 FR 7496). A "Withholding of Appraisement Notice" was published in the FEDERAL REGISTER of September 18, 1978 (43 FR 41449).

For purposes of this notice the term "bicycle tires and tubes" means pneumatic bicycle tires, and tubes therefor, of rubber or plastics, whether such tires and tubes are sold together as units or separately.

FINAL DETERMINATION OF SALES AT LESS THAN FAIR VALUE. On the basis of information developed in Customs' investigation and for the reasons noted below I hereby determine that bicycle tires and tubes from the Republic of Korea are being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

A. SCOPE OF THE INVESTIGATION

It appears that 100 percent of all imports of bicycle tires and tubes from the Republic of Korea were produced by Dae Yung Commercial Co., Ltd., Hung A Industrial Co., Ltd., and Korea Inoue Kasei Co., Ltd. The investigation was therefore limited to sales by these three producers.

B. BASIS OF COMPARISON

For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise on all investigated sales by Hung A and Dae Yung.

Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used for fair value purposes on these two manufacturers, since they sold in the home market sufficient quantities of such or similar merchandise to provide an adequate basis for comparison.

In the case of Korea Inoue Kasei, the proper basis of comparison is between purchase price and sales for exportation to countries other than the United States. Sales for exportation to countries other than the United States (Canada) were used in accordance with § 153.3 Customs Regulations (19 CFR 153.3) since no sales of such or similar merchandise were made in the home market.

Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for all three producers since the sales to the United States on which this determination is based were made to nonrelated customers.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States, in the home market, and to Canada during the period September 1, 1977, through February 28, 1978.

C. PURCHASE PRICE

For purposes of this determination, purchase price has been calculated on the basis of the f.o.b. price to unrelated U.S. importers. Sales were made to bicycle manufacturers and to replacement distributors in the United States.

Deductions were made, where applicable, on sales to both levels of trade for inland freight, wharfage costs, and customs brokerage. In accordance with section 203 of the Act (19 U.S.C. 162), an addition was made to purchase price for the rebate upon the exportation of the merchandise to the United States of customs duties, a defense tax and value-added taxes incurred on raw materials used in producing the goods.

D. HOME MARKET PRICE

For the purpose of this determination, the home market prices have been calculated on the basis of delivered prices to unrelated purchasers in the home market. With respect to both Hung A and Dae Yung, comparisons were made at the same commercial level of trade found in sales of the merchandise to the United States. In the "Withholding of Appraisement Notice," cited above, it was indicated that Dae Yung did not make sales to bicycle manufacturers in the home market. Therefore, because, at that time, a suitable basis could not be found for making a level-of-trade adjustment, sales to both bicycle manufacturers and replacement distributors in the United States were compared to sales to replacement distributors in the home market. However, it has now been determined that sales to bicycle manufacturers in the home market had been made during the period of investigation.

Adjustments were made, where applicable, to home market sales to replacement distributors for inland freight, rebates, bonuses, advertising, differences in credit, and defective merchandise. Sales to bicycle manufacturers in the home market were adjusted, where appropriate, for inland freight and defective merchandise.

Adjustments were made for rebates on home market sales by Dae Yung and Hung A because the rebates were properly linked to the volume of merchandise purchased by customers over a specified period of time and appear to have been consistently offered by both manufacturers. The adjustment made for bonuses in home market sales by Hung A related to the manufacturer's promotion of sales by distributors during a given period of time. The concept of bonuses is directly analagous to the basis on which rebates are given and was therefore allowed as a deduction from the home market price.

The adjustment for advertising expenses was made in the case of Dae Yung for certain advertising costs assumed by that manufacturer on behalf of its replacement distributors. The adjustments for differences in credit related to the differences in interest costs incurred by Dae Yung due to differences in the time of receipt of payment on sales in the home market from replacement distributors as compared with payment on export sales. These ajdustments were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

The adjustment for rejected merchandise concerned a deduction for merchandise returned by home market customers in the case of sales by Hung A. This manufacturer did not incur similar claims for rejected merchandise on sales to the United States. Accordingly, adjustments for the foregoing expense were made in accordance with § 153.10 of the Customs Regulations (19 CFR 153.10).

Hung A claimed adjustments for differences in interest costs due to differences in credit terms and for advertising expenses incurred only in the home market on behalf of its replacement distributors under § 153.10, Customs Regulations (19 CFR 153.10). Insufficient information was presented to justify making an adjustment for differences in interest costs. Advertising claims were not supported with sufficient documentation to show a relationship to the specific sales under consideration and were disallowed.

Claims were made for adjustments under § 153.10, Customs Regulations (19 CFR 153.10), by Dae Yung and Hung A for entertainment expenses and bad debt expenses incurred in the home market. These claims have been denied because Treasury has held consistently that such expenses are overhead expenses and are therefore not directly related to the sales under consideration. In any event, sufficient documentation was not provided to allow these claims.

E. SALES FOR EXPORTATION TO COUNTRIES OTHER THAN THE UNITED STATES

Since Korea Inoue Kasei does not sell such or similar merchandise in the home market, fair value was calculated by comparing exports to the United States with Korea Inoue Kasei's sales to third countries (Canada) in accordance with § 153.3 Customs Regulations (19 CFR 153.3). Sales to Canada represented 61 percent of Korea Inoue Kasei's sales to third countries other than the United States. Adjustments were made for differences in packing costs and differences in commissions paid between the sales to Canada and the United States, where appropriate.

F. RESULTS OF FAIR VALUE COMPARISONS

Using the above criteria, purchase price in certain instances was found to

be lower than the home market price or sales price to countries other than the United States of such or similar merchandise.

Comparisons were made on 40 percent, 92 percent, and 82 percent of the sales made by Dae Yung, Hung A, and Korea Inoue Kasei, respectively. Together this represents 54 percent of the sales made to the United States during the period under consideration.

Margins were found ranging from 0.2 to 36.6 percent on sales by Dae Yung, from 1.2 to 65.2 percent on sales by Hung A, and from 0.3 to 15.9 percent on sales by Korea Inoue Kasei. Weighted-average margins over the total sales compared for each firm were approximately 3.4 percent for Dae Yung, 5.3 percent for Hung A and 7.2 percent for Korea Inoue Kasei.

The Secretary has provided an opportunity to known interested persons to present written or oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

DECEMBER 21, 1978.

[FR Doc. 78-36327 Filed 12-28-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 236]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 19, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 1395 (Sub-11TA), filed November 8, 1978. Applicant: ALVAN MOTOR FREIGHT, INC., 3600 Alvan Road, Kalamazoo, MI 49001. Representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Grand Rapids and Clare, MI.: From Grand Rapids over U.S. 131 to junction with Michigan Highway 57, then over Michigan Highway 57 to its junction with U.S. Highway 27, then north on U.S. 27 to Clare and return over the same route, serving all intermediate points, except Greenville, and serving the off-route points of Alma, St. Louis, Winn, Weidman, Beal City, Vandercar, Delwin, Vernon Center, Rosebush and Leaton, restricted to traffic interlines at Grand Rapids, Kalamazoo or Detroit, MI., with other carriers, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): There are approximately (7) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: C. R. Flemming DS, ICC, 225 Federal Bldg., Lansing, MI. 48933.

MC 2202 (Sub-569TA), filed September 12, 1978, and published in the FEDERAL REGISTER issue of December 11, 1978, and republished as corrected this issue. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014.

Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting (1) *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* serving all intermediate points and all points located in Hardin, Orange, Jefferson, Chambers, Liberty, Harris, Galveston, Fort Bend, Brazoria, Colorado, Wharton, Guadalupe, Bexar, Wilson, Karnes, Goliad, Refugio, Aransas, Atascosa, Frio, La Salle, McMullen, Live Oak, Bee, San Patricio, Nueces, Kleberg, Jim Wells, Duval, Webb, Zapata, Jim Hogg, Brooks, Kenedy, Willacy, Cameron, Hidalgo, Starr, Dewitt, Calhoun, Matagora, Jackson, Lavaca, Gonzales, Victoria, Waller, Austin, Fayette, and Caldwell Counties, TX, as off-route points, (a) between Beaumont, TX and Las Cruces, NM: From Beaumont over U.S. Hwy 90 to Houston, TX, then over U.S. Hwy 290 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Las Cruces, and return over the same route; (b) between McAllen, TX and Kingman, AZ: From McAllen over U.S. Hwy 281 to San Antonio, TX, then over U.S. Hwy 87 to Amarillo, TX, then over U.S. Hwy 66 to Kingman, and return over the same route; (c) between Houston, TX and Brownsville, TX: (1) From Houston over U.S. Hwy 90 to San Antonio, TX, then over U.S. Hwy 81 to junction U.S. Hwy 83, then over U.S. Hwy 83 to Brownsville, and return over the same route; (2) From Houston over U.S. Hwy 59 to junction U.S. Hwy 77, then over U.S. Hwy 77 to Brownsville, and return over the same route; (d) between Victoria, TX and Laredo, TX: From Victoria over U.S. Hwy 59 to Laredo, and return over the same route; (e) between junction TX Hwy 9 and U.S. Hwy 281, at or near Three Rivers, TX, and Corpus Christi, TX: From junction TX Hwy 9 and U.S. Hwy 281, over TX Hwy 9 to Corpus Christi, and return over the same route; (f) between junction U.S. Hwys 60 and 87 and Las Cruces, NM: From junction U.S. Hwys 87 and 60 over U.S. Hwy 60 to Clovis, NM, then over U.S. Hwy 70 to Las Cruces, and return over the same route; (g) between junction U.S. Hwys 87 and 283 and Brady, TX: From junction U.S. Hwys 87 and 283, over U.S. Hwy 283 to junction U.S. Hwy 84, then over U.S. Hwy 84 to junction U.S. Hwy 80, then over U.S. Hyw 80 to junction U.S. Hwy 183, then over U.S. Hwy 183 to junction U.S. Hwy 377, then over U.S. Hwy 377 to Brady and return over the same route; (h) between Victoria, TX and San Ant-

onio, TX: From Victoria over U.S. Hwy 87 to San Antonio and return over the same route; (i) between San Antonio, TX and Del Rio, TX: From San Antonio over U.S. Hwy 90 to Del Rio and return over the same route; (j) between Del Rio, TX and Laredo, TX: From Del Rio over U.S. Hwy 277 to junction U.S. Hwy 83, then over U.S. Hwy 83 to Laredo and return over the same route; (k) between Eagle Pass, TX and junction TX Hwy 57 and U.S. Hwy 81 at or near Moore, TX: From Eagle Pass over TX Hwy 57 to junction U.S. Hwy 81 and return over the same route; (l) between Lamesa, TX and Midland, TX: From Lamesa over TX Hwy 349 to Midland and return over the same route; (m) between Fort Worth, TX and Lubbock, TX: (1) From Fort Worth over U.S. Hwy 180 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Lubbock and return over the same route and (2) From Fort Worth over U.S. Hwy 80 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Lubbock and return over the same route; (n) between Abilene, TX and Anson, TX: From Abilene over U.S. Hwy 83 to Anson and return over the same route; (o) between Comfort, TX and junction TX Hwy 27 and U.S. Hwy 290: From Comfort over TX Hwy 27 to junction U.S. Hwy 290, and return over the same route; and (2) *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)*, between Shreveport, LA and Beaumont, TX serving no intermediate points and serving Shreveport for purposes of joinder only: From Shreveport over U.S. Hwy 171 to junction LA Hwy 5, then over LA Hwy 5 to junction U.S. Hwy 84, then over U.S. Hwy 84 to junction TX Hwy 7, then over TX Hwy 7 to junction U.S. Hwy 96, then over U.S. Hwy 96 to Beaumont and return over the same route, for 180 days. Applicant intends to tack with MC 2202 and subs thereto and to interline. SUPPORTING SHIPPER(S): There are approximately 1,492 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: ICC, 731 Federal Building, 1240 East 9th Street, Cleveland, OH 44199. The purpose of this republication is to show applicant intends to tack and interline authority.

MC 26396 (Sub-214TA), filed November 7, 1978. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Roofing materials and wood fiber materials*, from ports of entry on the International Boundary line between the United States and Canada located in MT, to points in the State of UT, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): There are approximately (5) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Paul J. Labane DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 46054 (Sub-80TA), filed November 6, 1978. Applicant: BROWN EXPRESS, INC., 428 South Main Street, San Antonio, TX 78285. Representative: Phillip Robinson, 1806 Rio Grande, Austin, TX 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) Between Dallas, TX and Oklahoma City, OK: From Dallas over Interstate Highway 35 to Oklahoma City, serving no intermediate points. (2) Between Dallas, TX and Tulsa, OK: From Dallas over U.S. Highway 75 to junction U.S. Highway 69, then over U.S. Highway 69 to junction Indian Nation Turnpike, then over Indian Nation Turnpike to junction U.S. Highway 75 to Tulsa, and return over the same route, serving no intermediate points. (3) Between Dallas, TX and Indianapolis, IN: From Dallas over Interstate Highway 30 to Little Rock, AR, then over Interstate Highway 65 to Indianapolis, IN, and return over the same route, serving the intermediate point of Louisville, KY, and serving no other intermediate points except the junction of Interstate Highway 30 and U.S. Highway 59 (near Texarkana, TX) and Memphis, TN, for purposes of joinder only. (4) Between Louisville, KY and Detroit, MI: From Louisville, KY over Interstate Highway 71 to junction Interstate Highway 75, then over Interstate Highway 75 to Detroit, MI, and return over the same route, serving the intermediate points of Cincinnati and Toledo, OH. (5) Between Houston, TX and junction of Interstate Highway 30 and U.S. Highway 59, from Houston, TX over U.S. Highway 59 to junction Interstate Highway 30 and U.S. Highway 59, serving no intermediate points and serving the junction of Interstate Highway 30 and U.S. Highway 59 for purposes of joinder only. (6) Between Memphis, TN and St. Louis, MO: From Memphis, TN over Interstate Highway 55 to St. Louis, MO, serving no intermediate points and serving Memphis for purposes of joinder only and serving St. Louis for purposes of interchange only. Applicant desires to serve all points in the Commercial Zones of OKC, TUL, OK; IND, LOU, KY; CIN & TOL, OH; and DET, MI. RESTRICTION: Service over Routes (3) and (4) is restricted against the transportation of shipments by carrier where carrier's origin and carrier's destination are both within IN, KY, MI, or OH. Applicant proposes to tack at Dallas and Houston, TX; and interline at Oklahoma City and Tulsa, OK; Indianapolis, IN: Louisville, KY; Cincinnati and Toledo, OH, St. Louis, MO; and Detroit, MI, for 180 days. SUPPORTING SHIPPER(S): There are approximately (429) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Richard H. Dawkins DS, ICC, Room B-400 Federal Building, 727 E. Durango, San Antonio, TX 78206.

MC 52460 (Sub-No. 227TA), filed November 7, 1978. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9637, Tulsa, OK 73107. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. *Anhydrous ammonia*, (in bulk), from the facilities of Chevron Chemical Company at or near Friend, KS., to points in Colorado, Nebraska, Oklahoma, Texas and Wy., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Chevron Chemical Company, 3001 LBJ Freeway, Suite 130, Dallas, TX 75234. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 61620 (Sub-No. 14TA), filed November 7, 1978. Applicant: M & G TRANSPORTATION CO., INC., Gloucester, VA 23061. Representative: Eugene Thomas (same address as applicant). *Tin cans, glass, plastic, and paper containers, and accessories thereof*, used in the manufacture of foodstuffs, from Norfolk, VA., and from Baltimore, MD., to Norfolk, VA., and points in its commercial zone, and Seaford, VA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPERS(S): There are approximately (11) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PRO-

TESTS TO: Paul D. Collins DS, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

MC 65941 (Sub-No. 59TA), filed November 6, 1978. Applicant: TOWER LINES, INC., Third and Warwood Avenue, Wheeling, WV 26003. Representative: Geo. V. Thieroff, Third and Warwood Avenue, Wheeling, WV 26003. *Zinc oxide*, in bags, from the facilities of St. Joe Zinc Company, Josephtown, (Porter township, Beaver County), PA., to Huntsbille, AL., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA. 15222. SEND PROTESTS TO: J. A. Niggemyer DS, ICC, 416 Old Post Office Building, Wheeling, WV. 26003.

MC 82841 (Sub-No. 238TA), filed November 6, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Representative: William E. Christensen (same address as applicant). *Panelized houses*, from Omaha, NE., to points in WY., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Larry D. Green President American Marketing Corporation, 14675 Grover St., Omaha, NE 68144. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE. 68102.

MC 102616 (Sub-No. 968TA), filed November 6, 1978. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Road, Akron, OH 44313. Representative: David F. McAllister, 250 North Cleveland-Massillon Road, Akron, OH 44313. *Crude light oil* (in bulk, in tank vehicles), from Terre Haute, IN, to Lemont, IL, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Union Oil Company of CA, 1650 E. Golf Road, Schaumburg, IL 60196. SEND PROTESTS TO: Mary Wehner DS, ICC, 731 Federal Office Bldg., 1240 East Ninth Street, Cleveland, OH 44199.

MC 107403 (Sub-No. 1133TA), filed November 7, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). *Dry sugar*, (in bulk, in tank vehicles), from Gramercy, LA, to Denison, TX; Pulaski, TN and St. Louis, MO, for 180 days. SUPPORTING SHIPPER(S): Colonial Sugars, Borden, Inc., 129 S. 5th Avenue, Gramercy, LA 70052. SEND PROTESTS TO: T. M. Esposito Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107403 (Sub-No. 1135TA), filed November 6, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). *Ground glass*, (in bulk), from Cleveland, OH, to Delmar, NY, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): The Bassichis Co., 2323 W. Third Street, Cleveland, OH 44113. SEND PROTESTS TO: T. M. Esposito Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 114211 (Sub-No. 383TA), filed November 6, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). *Iron and steel articles*, from the plantsite of Maverick Tube Corp., located at or near Union, MO, to points in Iowa, Kansas, Minnesota, Nebraska, North Dakota, and SD, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Maverick Tube Corp., 311 N. Lindbergh Boulevard, St. Louis, MO 63141. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 116457 (Sub-No. 37TA), filed November 6, 1978. Applicant: GENERAL TRANSPORTATION, INC., 1804 South 27th Avenue, P.O. Box 6484, Phoenix, AZ 85005. Representative: D. Parker Grosby, 1710 South 27th Avenue, P.O. Box 6484, Phoenix, AZ 85005. *Lumber and lumber products*, from Fredonia, AZ., to Bend, OR, and Caldwell, ID., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Kaibab Industries, P.O. Box 20506, Phoenix, AZ 85036. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020 Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

MC 116763 (Sub-No. 453TA), filed November 6, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Metal and plastic containers and their equipment of bails, handles, covers, bungs, lids or nozzles*, (except commodities in bulk, in tank vehicles), from Homerville, GA., to points in the United States in and east of MN, IA, MO, OK & TX., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Standard Container Corporation, Grover Turner Materials Manager, P.O. Box 336, Homerville, GA 31634. SEND PROTESTS TO: Paul J. Lowry DS, ICC, 5515-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 118130 (Sub-No. 92TA), filed November 7, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. (1) *Charcoal briquets, vermiculite, hickory chips, fireplace logs, compressed sawdust (wax impregnated), charcoal lighter fluid and related barbeque items;* and (2) *materials, equipment and supplies* used in the sale and distribution of items named in (1) above, (1) From Springfield, OR., to points in Arizona, California, Idaho, Montana, Nevada, Utah and WY, and (2) from points in Arizona, California, Idaho, Montana, Nevada, Utah and WY, to Springfield, OR., (1) from Elk Grove, CA., to points in Arizona, California, Nevada and UT, and (2) from points in Arizona, California, Nevada, and UT., to Elk Grove, CA., and (1) from Cotter, AR., to points in Arizona, California, Colorado, Kansas, Illinois, Missouri, New Mexico, Oklahoma and TX, and (2) from points in Arizona, California, Colorado, Kansas, Illinois, Missouri, New Mexico, Oklahoma and TX., to Cotter, AR; and (1) from Jacksonville, TX., to points in Arizona, California, Colorado, Nevada, New Mexico, and OK, and (1) from points in Arizona, California, Colorado, Nevada, New Mexico, and OK., to Jacksonville, TX., for 180 days. SUPPORTING SHIPPER(S): Kingsford Company, Division, of Clorox, 940 Commonwealth Blvd., Louisville, KY 40201. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 119496 (Sub-No. 14TA), filed November 6, 1978. Applicant: THE JAMES GIBBONS CO., 1700 Sutton Avenue, Baltimore, MD 21227. Representative: L. C. Major, Jr., 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312. *Packaged petroleum products*, (except in bulk), from the plantsite of Quaker State Oil Refining Corp., Congo, WV., to Baltimore, MD., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): J. D. Campbell GTM, Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. SEND PROTESTS TO: W. L. Hughes DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 120181 (Sub-13TA), filed November 6, 1978. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: Ralph R. Howard (same address as applicant). *Containers*, between Alton, IL, and Owensboro and Henderson, KY, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER: Owens-Illinois, Inc., P.O. Box 1035,

Toledo, OH 43666. SEND PROTESTS TO: P. E. Binder DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO. 63101.

MC 125952 (Sub-32TA), filed November 7, 1978. Applicant: INTERSTATE DISTRIBUTOR CO., P.O. Box 99307, 8311 Durango S.W., Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cakes and cookies*, from Oakland, CA, to points in CO, NM and TX; and (2) *Bakery supplies, materials, and ingredients*, from points in CO, NM and TX, to Oakland, under a continuing contract or contracts, with Mother's Cake & Cookie Co., for 180 days. SUPPORTING SHIPPER: Mother's Cake & Cookie Co., P.O. Box 24502, Oakland, CA. SEND PROTESTS TO: Hugh H. Chaffee DS, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 127602 (Sub-18TA), filed November 6, 1978. Applicant: DENVER-MIDWEST MOTOR FREIGHT, INC., P.O. Box 996, 5555 E. 58th Avenue, Commerce City, CO 80022. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Denver, CO and Phoenix, AZ: From Phoenix over Interstate Hwy 17 to Flagstaff, AZ, then over U.S. Hwy 89 to junction U.S. Hwy 160, then over U.S. Hwy 160 to Durango, CO, then over U.S. Hwy 550 to Montrose, CO, then over U.S. Hwy 550 to Grand Junction, CO, and then over Interstate Hwy 70 to Denver, CO, and return over the same route, serving the intermediate points of Montrose and Delta, CO, and Kayenta and Mexican Water, AZ, and the off-route points of Aneth, UT and Farmington, NM, for 180 days. SUPPORTING SHIPPERS: There are approximately (55) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Roger Buchanan DS, ICC, Room 492 U.S. Customs House, 721-19th Street, Denver, CO 80202.

NOTE.—Applicant intends to tack the authority sought with authority it holds in MC-127602 and subs thereunder and with temporary authority it holds under MC-F-13723 and MC-F-13021. Applicant intends to interline the authority sought at Grand Junction and Denver, CO, Farmington, NM and Phoenix, AZ.

MC 128966 (Sub-6TA), filed November 7, 1978. Applicant: METROPOLITAN CARTAGE AND LEASING, INC., 1703 West 9th Street, Kansas City, MO 64101. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Meats, meat products and meat by-products, and articles distributed by packinghouses, and frozen foods and foodstuffs*, which require refrigeration, from points in the Kansas City, MO-KS Commercial Zone, as defined by the Commission, to points in KS, on and east of Highway 281, for 180 days. SUPPORTING SHIPPER(S): There are approximately (9) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 129624 (Sub-19TA), filed November 6, 1978. Applicant: ROUTE MESSENGERS OF PENNSYLVANIA, INC., 2425 Bainbridge Street, Philadelphia, PA 19146. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. *Cleaning compounds, insecticides, air freshners, deodorizers, brooms, brushes, mops, toilet preparations, cosmetics, food supplements, food seasoning, household utensils, clothing hangers, mirrors, costume jewelry, books magnetic tapes, hosiery, and fire extinguishers, and advertising and promotional material related to the foregoing*, (1) from the facilities of Amway Corp., in Dayton, NJ, to the carrier's terminal in Philadelphia, PA; (2) from the carrier's terminals in Philadelphia, PA., and Camden, NJ., to points in Delaware, New Jersey, that part of PA east of the western boundaries of Potter, Clinton, Centre, Huntingdon and Fulton Counties, and that part of Maryland east of the Chesapeake Bay. RESTRICTION: Operations under paragraph 1 above are restricted to shipments moving from the facilities of Amway Corp., in Dayton, NJ to carrier's terminal in Philadelphia, PA., for trans-shipment under paragraph 2 above, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Amway Corp., Monmouth Junction Road, Box 900, Dayton, NJ 08810. SEND PROTESTS TO: T. M. Esposito, Trans, Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 133095 (Sub-212TA), filed November 6, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Ralph B. Matthews, 1200 Gas Light Tower, 235 Peachtree Street, N.E., Atlanta, GA 30303. (1) *Heating and air conditioning equipment parts and accessories*, from the plantsite of Heil Quaker Corp., Nashville, TN., to points and places in the states of AL, AR, CT, IL, IN, KS, LA, MI, MS, MO, NJ, NY, OH, OK, PA and TX, and; (2) *Materials, equipment and supplies* used in the manufacture and distribution of heating and air conditioning equipment, parts and accessories, from points named in (1) above, to the facilities of Heil Quaker Corp. at or near Nashville, TN., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Heil Quaker Corp., 1714 Heil Quaker Blvd., Nashville, TN. SEND PROTESTS TO: Robert J. Kirspel DS, Room 9A27 Federal Bldg., 819 Taylor Street, Ft. Worth, TX 76102.

MC 133095 (Sub-213TA), filed November 6, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Household products and related articles, dessert preparations, milk food liquid, beverage preparations, non-carbonated water, hair care toiletries and hair care equipment, drugs, shampoo, soap and toilet articles*, from the facilities utilized by Bristol-Myers Co., and its subsidiaries, Clairol, Inc., Drackett Company, Meade-Johnson & Co., Monarck Crown Corp., and Westwood Pharmaceuticals, Inc., at Dallas, TX to Shreveport, Monroe, Alexandria, New Orleans, Baton Rouge, Lafayette, and Broussard, LA and their commercial zones, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Bristol-Myers Co., 345 Park Avenue, New York, NY 10022. SEND PROTESTS TO: Robert J. Kirspel, DS, Room 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 133655 (Sub-129TA), filed November 6, 1978. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities* as are used or sold by retail variety stores, between Ridgefield, NJ, and Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Mississippi, Oklahoma, Tennessee and TX, for 180 days. SUPPORTING SHIPPER: S. H. Kress and Company, 114 Fifth Avenue, New York, NY 10011. SEND PROTESTS TO: Haskell E. Ballard DS, ICC, Box F-13206 Federal Bldg., Amarillo, TX 79101.

MC 135082 (Sub-78TA), filed November 7, 1978. Applicant: ROADRUN-

NER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road, N.E., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). *Tile and floor coverings*, and the commodities used in the installation thereof, from El Paso, TX, to the states of AZ, NM, and CA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Facings of America, Inc., Van Gilse Ltd., Phoenix, AZ. SEND PROTESTS TO: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue S.W., Albuquerque, NM 87101.

MC 135884 (Sub-14TA), filed November 8, 1978. Applicant: CALDWELL TRUCKING, INC., a corporation, Holdman Route, Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N.W., 23rd Avenue, Portland, OR 97210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber (Veneer Flitch Stock)*, from St. Joseph, MO, Louisville and Winchester, KY; New Albany, Edinburg and Seymour, IN, Piqua, OH; Martinsburg, VA; Rockford, IL; Princeton, WV and their commercial zones to the facilities of Fronville Commercial Co., Inc., at Wilsonville, OR, under a continuing contract, or contracts, with Fronville Commercial Co., Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Fronville Commercial Co., Inc., 9625 S.W., 5th, Wilsonville, OR 97070. SEND PROTESTS TO: R. V. Dubay DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 136782 (Sub-5TA), filed November 6, 1978. Applicant R.A.N. TRUCKING CO., P.O. Box 367, Wheatland, PA 16161. Representative: Warren W. Wallin, Sullivan & Associates, Ltd., 10 South LaSalle Street, Chicago, IL 60603. *Meats, meat products, and meat by-products* as described in Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), from the facilities of Gartner-Harf Co. at Waterford, PA, to points in CT, DE, MD, MI, IL, IN, KY, MA, NJ, NY, OH, RI, VA, WI and DC, for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER: Gartner Harf Co., R.D. No. 4, Waterford, PA 16441. SEND PROTESTS TO: John J. England DS, ICC, 2111 Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 138000 (Sub-40TA), filed November 7, 1978. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Bakery goods*, from Richmond, VA, and its commercial zone, to points in MI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Nabisco, Inc., 6002 S. Laburnum Street, Richmond, VA 23231. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138686 (Sub-3TA), filed November 6, 1978. Applicant: L.C.W. TRUCKING, INC., 119 E. Chavez, Edinburg, TX 78539. Representative: L. C. Waller, 119 E. Chavez, Edinburg, TX 78539. *Malt beverages* from San Antonio, TX, to points in New Mexico, Arizona, Colorado and NV, for 180 days. SUPPORTING SHIPPER: Pearl Brewing Co., P.O. Box 1661, San Antonio, TX 78296. SEND PROTESTS TO: Richard H. Dawkins DS, ICC, Room B-400 Federal Bldg., 727 E. Durango St., San Antonio, TX 78206.

MC 140952 (Sub-1TA), filed November 7, 1978. Applicant: REFRIGERATED EXPRESS, INC., 720 12th Street, Huntington, WV 25701. Representative; John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Such commodities* as are dealt in by wholesale, retail, chain grocery and food business houses, moving in mechancally refrigerated vehicles, from Huntington, WV, to points in West Virginia and those in Buchanan and Tazewell Counties, VA, for 180 days. SUPPORTING SHIPPERS: Swift & Company, Trevor H. Tucker Mgr., Trans., Services, 115 West Jackson Blvd., Chicago, IL 60604. (2) David E. Nystrom Asst., Traffic Mgr., Plants and Ware houses, The Nestle Company, Inc., 100 Bloomingdale Road, White Plains, NY 10604. (3) Robert W. Pettigrew, General Traffic Mgr., Hershey Chocolate Co., 19 E. Chocoloate Avenue, Hershey, PA 17033. SEND PROTESTS TO: Ruth F. Stark, Secretary, ICC, 3108 Federal Office Bldg., 500 Quarrier Street, Charleston, WV. 25301.

MC 141357 (Sub-6TA), filed November 6, 1978. Applicant: GENE P. SHANUS, SHANUS, INC., 232 North First Street, Minneapolis, MN 55401. Representative; Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Petroleum coke* (in bulk), from Pine Bend, MN, to points in WI, for 180 days. SUPPORTING SHIPPER: Koch Refining Co., P.O. Box 43596, St. Paul, MN 55164. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 141572 (Sub-1TA), filed November 7, 1978. Applicant: COUNCIL HAULING, INC., 1447 Clay Street, Franklin, VA 23851. Representative: Richard J. Lee, 4070 Falstone Road, Richmond, VA 23234. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, particleboard and wood residuals*, between the plantsites of Union Camp Corp., located near Franklin and Waverly, VA; Seaboard and Smithfield, NC, on the one hand, and on the other, points in Delaware, Maryland, New Jersey, Pennsylvania, Tennessee, West Virginia and the District of Columbia., under a continuing contract or contracts, with Union Camp Corp., for 180 days. SUPPORTING SHIPPER: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. SEND PROTESTS TO: Paul D. Collins DS, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 141804 (Sub-149TA), filed November 7, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Mouldings, mill work, wood products, building material and supplies*, from the facilities of Sierra Pacific Industries at Chico, CA, to Atlanta, GA, Grandville, MI, Hatfield, MA, Ocala, FL, Providence, R.I., Toledo, OH., and Waterbury, CT., and their respective commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Sierra Pacific Industries, P.O. Box 600, Chico, CA 95927. SEND PROTESTS TO: Irene Carlos, Trans. Asst., ICC, Room 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143001 (Sub-1TA), filed November 7, 1978. Applicant: GLENN PETERSON, d.b.a. PETERSON TRANSIT, Route 2, Merrill, WI 54452. Representative: Frank M. Coyne, 25 W. Main Street, Madison, WI 53703. *Canned vegetables*, from Poynette, WI, to points in Virginia, North Carolina, South Carolina, Georgia and FL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Oconomowoc Canning Co., P.O. Box 748, Oconomowoc, WI 53066. SEND PROTESTS TO: Ronald Morken DS, 212 E. Washington Avenue, Room 317, Madison, WI 53703.

MC 143032 (Sub-9TA), filed November 6, 1978. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 3112 Truck Center Drive, Duluth, MN 55806. Representative: James B. Hovland, 414 Gate City Bldg., P.O. Box 1680, Fargo, ND 58102. *Lumber, lumber products and wood products*, from the facilities of Weyerhauser Co. at or near Duluth, MN, to points in Ashland, Barron, Bayfield, Burrett, Chippewa, Douglas, Dunn, Eau Claire, Iron, Polk, Price, Rusk, St. Croix, Sawyer and Washburn Counties, WI, for 180 days. SUPPORTING SHIPPER: Weyerhauser Co., 100

South Wacker Drive, Chicago, IL 60606. SEND PROTESTS TO: Delores A. Poe, Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143223 (Sub-2TA), filed November 6, 1978. Applicant: CARL CRAWFORD, d.b.a. CRAWFORD MOBILE HOMES, North Road, Houlton, ME 04730. Representative: Virginia E. Davis, 2 Canal Street, Portland, ME 04112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Mobile and modular homes* in initial transportation, from Oxford, ME, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and NY, under a continuing contract or contracts, with Oxford Homes, Inc., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER: Oxford Homes, Inc., Route 26, Oxford, ME 04270. SEND PROTESTS TO: Max Gorenstein DS, ICC, 150 Causeway Street, Boston, MA 02114.

MC 143267 (Sub-40TA), filed November 7, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. *Iron and steel articles*, from the facilities of Wheeling Pittsburgh Steel, Allenport, PA, to points in the lower peninsula of MI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER: Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, PA 15230. SEND PROTESTS TO: Mary Wehner DS, ICC, 731 Federal Office Building, 1240 East Ninth St., Cleveland, OH 44199.

MC 143436 (Sub-19TA), filed November 6, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. *Foodstuffs*, (except in bulk), and confectionery items in vehicles equipped with mechanical refrigeration, from the facilities of Hershey Foods Corp., located at or near Cincinnati, OH, to points in IN, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Hershey Foods Corp., Hershey, PA 17033. SEND PROTESTS TO: Beverly J. Williams Trans. Asst., ICC, Federal Bldg., & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 143775 (Sub-30TA), filed November 6, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 W. Orangewood, Glendale, AZ 85301. *General commodities* moving on Bills of Lading of Freight Forwarders as defined in Section 402(a)(5) of the Interstate Commerce Act. From points in TX, MO, and TN, to New York, NY; Patchogue, L.I., Scranton, PA; Allentown, and Philadelphia, PA; New Haven, CT; Worcester and Boston, MA; Binghamton and Utica, NY; Burlington, VT; Rochester and Buffalo, NY; Baltimore, MD; Washington, DC; Norfolk and Richmond, VA; and points with the commercial zones thereof, for 180 days. SUPPORTING SHIPPER(S): Springmeier Shipping Company, Inc., 1123 Hadley Street, St. Louis, MO 63101. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020, Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

MC 143775 (Sub-31TA), filed November 6, 1978. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 W. Orangewood, Glendale, AZ 85301. *Alcoholic beverages*, (except in bulk), from Asti and Madera, CA, to Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and VA, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): United Vintners, 601 Fourth St., San Francisco, CA 94107. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020, Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025.

MC 143995 (Sub-8TA), filed November 6, 1978. Applicant: SLOAN TRANSPORTATION, INC., 6522 W. River Drive, Davenport, IA 52802. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Non-alcoholic beverages*, from the facilities of Mid-West Pop Quad Cities, Inc., at Moline, IL, to points in IA, under a continuing contract, or contracts, with Mid-West Pop Quad Cities, Inc., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): Mid-West Pop Quad Cities, Inc., 5205 22nd Avenue, Moline, IL 61265. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 144624 (Sub-1TA), filed November 7, 1978. Applicant: AMERICAN-STREVELL TRANSPORT, INC., 1401 South 700 West, Salt Lake City, UT 84104. Representative: Thomas J. Giblin, Jr., P.O. Box 26708, 1401 South 700 West, Salt Lake City, UT 84125. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building equipment and supplies;* such commodities as are used by or dealt in by wholesale or retail department, grocery and hardware stores and warehouses, (except heavy machinery, commodities in bulk, in tank vehicles, and uncrated store fixtures), from Rockdale County, GA, and Marshall, MI) (1) from all points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and DC, to all points in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, (2) between Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming, under a continuing contract, or contracts, with American-Strevell, Inc., for 180 days. SUPPORTING SHIPPER(S): American-Strevell, Inc., 1401 South 700 West, Salt Lake City, UT 84104. (George J. Bitzes, Jr., President and C.F.O.) SEND PROTESTS TO: L. D. Helfer DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 144692 (Sub-2TA), filed November 6, 1978. Applicant: GARY L. MANN, d.b.a. G. L. MANN TRUCKING, 551 East 18th Street, Hastings, MN 55033. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Petroleum coke*, (in bulk), from Pine Bend, MN, to points in WI, for 180 days. SUPPORTING SHIPPER(S): Koch Refining Company, P.O. Box 43596, St. Paul, MN 55164. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145001 (Sub-3TA), filed November 6, 1978. Applicant: HORACE CHAVIS, d.b.a. CHAVIS TRANSFER, 2019 Decatur Street, Richmond, VA 23224. Representative: Calvin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated cabinets*, from points in VA, to points in GA, FL, NC, DC, OH, TX, NY, and KY, under a continuing contract or contracts, with Modern Woodwork, Inc., for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Modern Woodwork, Inc., 1620 Altamont Avenue, P.O. Box 6817, Richmond, VA 23230. SEND PROTESTS

TO: Paul D. Collins DS, Rm. 10-502 Federal Bldg., 400 N. 8th Street, Richmond, VA 23240.

MC 145590 (Sub-1TA), filed November 3, 1978. Applicant: J & M ENTERPRISES, INC., 64 Oakland Street, East Hartford, CT 06108. Representative: Hugh M. Joseloff, 80 State Street, Hartford, CT 06103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise* as is produced or dealt in by wholesale, retail and chain bakeries, and materials, equipment and supplies used in the production thereof, between Springfield, MA, on the one hand, and, on the other, points in Rhode Island, Connecticut, New Hampshire, New York, Vermont, Maine, New Jersey and PA., under a continuing contract or contracts, with Springfield Bakery, Inc., for 90 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Springfield Bakery, Inc., 297 Plainfield Street, Springfield, MA. SEND PROTESTS TO: J. D. Perry, Jr., ICC 135 High Street, Room 324, Hartford, CT. 06103.

MC 145613 (Sub-1TA), filed November 3, 1978. Applicant: TOBAR ENTERPRISES, INC., P.O. Box 16188, Salt Lake City, UT 84116. Representative: Kent S. Pantone, 2944 Willow Creek Drive, Sandy, UT 84070. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fabric, greige goods, (not dyed), rolled fabric goods, piece goods, trim items (zippers, thread, buttons, belts, etc.), cut goods, finished goods, apparel manufacturing equipment, office equipment and supplies and imported fabric*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, WA, WY, and UT., under a continuing contract or contracts, with Pyke Manufacturing Company in Salt Lake City, UT., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Pyke Manufacturing Company, 1025 South 700 West, Salt Lake City, UT 84104. (Douglas J. Hansen, Personnel/Industrial Relations Manager) SEND PROTESTS TO: Lyle D. Helfer DS, ICC, 5301 Federal Bldg., Salt Lake City, UT. 84138.

MC 145642 (Sub-1TA), filed November 6, 1978. Applicant: GENE INMAN, d.b.a. GENE INMAN TRUCKING, RFD 1, Box 148-A, Whiteville, NC 28472. Representative: Mr. F. Kent Burns, 107 Fayetteville Street, Raleigh, NC 27602. *Wood residuals including woodchips, woodchips and sawdust*, between points in NC, SC, and VA., for 180 days. An underlying ETA seeks up to 90 days operating authority. SUPPORTING SHIPPER(S): Georgia-Pacific Corporation, P.O. Box 1808, Augusta, GA 30903. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 145684 (Sub-1TA), filed November 6, 1978. Applicant: T. H. SOSSAMAN, P.O. Drawer 33, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry animal and poultry feeds, and equipment and supplies* used in the raising of livestock, in mixed loads with dry animal and poultry feeds, (except liquid commodities in bulk, in tank vehicles); and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of dry animal and poultry feeds, (except liquid commodities in bulk, in tank vehicles), (1) from Hereford, TX to points in OK, NM, NE, KS, and CO; and (2) from points in OK, NM, NE, KS, and CO to Hereford, TX., under a continuing contract or contracts, with Moorman Manufacturing Company, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Moorman Manufacturing Company, Hereford, TX SEND PROTESTS TO: Haskell E. Ballard DS, ICC.

MC 145691 (Sub-1TA), filed November 3, 1978. Applicant: WARNER C. CORBIN, d.b.a. C & B TRANSFER, 51 Kane Street, Baltimore, MD 21224. Representative: Chester A. Zyblut, 1030 15th Street, NW., Washington, DC 20005. *General commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), when moving on bills of lading of freight forwarders as defined in Section 402 (a)(5) of the Act, between the facilities of Lifschultz Fast Freight, Inc., Baltimore, MD, on the one hand, and, on the other, Washinton, DC, and points in its commercial zone, for 180 days. An underlying ETA seeks up to 90 days of operating authority. SUPPORTING SHIPPER(S): Raymond A. Peloquin Terminal Manager, Lifschultz Fast Freight, Inc., 51 Kane Street, Baltimore, MD. 21224. SEND PROTESTS TO: William L. Hughes DS, ICC, 1025 Federal Bldg., Baltimore, MD. 21201

MC 145715 TA, filed November 7, 1978. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Road, Van Buren, AR 72956. Representative: Bernard J. Kompare, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A & C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and skins and commodities in bulk), from the facilities utilized by John Morrell & Co., at or near Fort Smith, AR., to points in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania and TN, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., 208 S. LaSalle Street, Chicago, IL 60604. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 145721 TA, filed November 7, 1978. Applicant: STEWART TRANSPORTATION SERVICES, INC., P.O. Box 926, Melbourne, FL 32901. Representative: Elbert Brown, Jr., P.O. Box 1278, Altamonte Springs, FL 32701. *General commodities*, (except household goods, classes A and B explosives, commodities requiring the use of special equipment, commodities in bulk, having an immediately prior or subsequent movement by air, between Melbourne Regional Airport and Orlando International Airport, FL., on the one hand, and, on the other, points in Brevard, Osceola, Orange, Seminole and Indian River Counties, FL., for 180 days. SUPPORTING SHIPPER(S): (1) Dictaphone Corp., 3900 W. Sarno Road, Melbourne, FL (2) Air Compak, Inc., P.O. Box 607, Melbourne, FL 32901 (3) Harris Controls, Inc., 2140 Troutman Blvd., Palm Bay, FL. SEND PROTESTS TO: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL. 32202.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-36187 Filed 12-28-78; 8:45 am]

[7035-01-M]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 237]
DECEMBER 20, 1978

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify

the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 3252 (Sub-107TA), filed November 9, 1978. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 03043. *Gasoline and diesel fuel,* (in bulk), from Albany, NY., to Lee and North Adams, MA., for 90 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Lehigh Oil Company, Inc., 1 Terminal Way, Norwich, CT. 06360. SEND PROTEST TO: ICC, Room 305, 76 Pearl Street, Portland, ME 04111.

MC 11207 (Sub-459TA), filed November 9, 1978. Applicant: DEATON, INC., 317 Avenue W, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. *Building paper, roofing paper, sheathing paper and wrapping paper,* between Valdosta, GA., on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Indiana, Kentucky, Kansas, Louisiana, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia, for 180 days. SUPPORTING SHIPPER(S): Firstline Corporation, 3425 Wilshire Boulevard, Los Angeles, CA 90010. SEND PROTESTS TO: Mable E. Holston Trans. Asst., ICC, Room 1616, 2121 Bldg., Birmingham, AL 35203.

MC 21455 (Sub-46TA), filed November 15, 1978, Applicant: GENE MITCHELL CO., West Liberty, IA 52776. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. *Frozen pancreas glands for pharmaceutical purposes,* (1) from Davenport, and Sioux City, IA; and Omaha, NE., to Elizabeth, NJ; Houston, TX; New Orleans, LA; and Norfolk, VA; and (2) from Milwaukee, WI., to Houston, TX and New Orleans, LA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): H. A. Salzman Company, 308 E. River Drive, Davenport, IA 52808. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 40978 (Sub-48TA), filed November 13, 1978. Applicant: CHAIR CITY MOTOR EXPRESS, CO., 3321 Business 141 South, P.O. Box 686, Sheboygan, WI 53081. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Plastic sheeting in rolls,* from the facilities of The Orchard Corporation of America at St. Louis, MO, to the facilities of Pluswood Incorporated at Oshkosh, WI, for 180 days, SUPPORTING SHIPPER(S): Pluswood Incorporated, P.O. Box 2w48, Oshkosh, WI. 54901. SEND PROTESTS TO: Gail Daugherty Trans. Asst, ICC, 619 U.S. Courthouse & Federal Bldg., 517 East Wisconsin Avenue, Milwaukee, WI. 53202.

MC 52704 (Sub-191TA), filed November 9, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Plastic containers and parts for plastic containers,* from the facilities of Amoco Chemicals Corporation at or near Monroe, GA., to points in AL, FL, NC, SC, TN and WV., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Amoco Chemicals Corporation, 200 East Randolph Drive, Chicago, IL 60601. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 52704 (Sub-192TA), filed November 9, 1978. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. (1) *Malt beverages, in containers,* from the facilities of Jos. Schlitz Brewing Company located at or near Memphis, TN, Tampa, FL and Winston-Salem, NC, to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and the District of Columbia.; and (2) *Materials, equipment and supplies* used in the manufacture and distribution of malt beverages, (except commodities in bulk), from points in the states named in (1) above, to the facilities of Jos. Schlitz Brewing Company at or near Memphis, TN, Tampa, FL and Winston-Salem, NC., for 180 days. SUPPORTING SHIPPER(S): There are approximately (10) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 61955 (Sub-24TA), filed November 15, 1978. Applicant: CENTROPOLIS TRANSFER CO., INC., 701 North Sterling, Sugar Creek, MO 64054. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. *Fertilizer and/or fertilizer ingredients,* (in bulk), from the facilities of Brunswick River Terminal, Inc., at or near Brunswick, MO., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma and TN., for 180 days. SUPPORTING SHIPPER(S): Brunswick River Terminal, Inc., P.O. Box 235, Brunswick, MO 65236. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 64932 (Sub-589TA), filed November 9, 1978. Applicant: ROGERS CARTAGE CO., 10735 South Cicero, Oak Lawn, IL 60453. Representative: William F. Farrell, 10735 South Cicero, Oak Lawn, IL 60453. *Sulphuric acid,* (in bulk), in heresite lined tank vehicles, from the plantsite of Prestolite Co., at Reading, PA., to the plantsite of Prestolite at Toledo, OH., for 180 days. SUPPORTING SHIPPER(S): ELTRA Corporation, 511 Hamilton Street, Toledo, OH 43694. SEND PROTESTS TO: Lois M. Stahl Trans., Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 87476 (Sub-14TA), filed November 9, 1978. Applicant: CARL SCHAEFER, JR., TRUCK LINE, INC., 2600 Willowburn Avenue, Dayton, OH 45426. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. *Inedible meat by-products,* in tubs with or without lids, in refrigerated equipment, between points in OH, on the one hand, and, on the other, points in IL, IN, KY, MI, OH and PA., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kal Kan Foods, Inc., John D. Jurczak Purchasing Manager, 5115 Fisher Road, Columbus, OH 43228. SEND PROTESTS TO: Paul J. Lowry DS, ICC, 5514-B Federal Bldg., 550 Main Street, Cincinnati, OH 45202.

MC 106074 (Sub-71TA), filed November 9, 1978. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Highway No. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. *Metal containers, metal container closures, metal container ends, and metal container accessories*, from the facilities of Carnation Company at St. Joseph, MO., to Tucker, GA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-72TA), filed November 9, 1978. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Highway No. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. *Clay, floor sweeping compounds, and absorbents*, (except in bulk), from the facilities of Oil-Dri Corporation of America at or near Ripley, MS., to all points in Iowa, Illinois, Kansas, Minnesota, Missouri, Nebraska and WI., for 180 days. SUPPORTING SHIPPER(S): Oil-Dri Corp. of America, 520 North Michigan Avenue, Chicago, IL 60601. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 108053 (Sub-155TA), filed November 15, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., 1520 West 23rd Street, Fremont, NE 68025. Representative: Arthur J. Sibik, 7025 So. Pulaski Road, Chicago, IL 60629. *Foodstuffs*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Suffolk, VA, to points in IL and OH, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): James J. Walsh, Director of Traffic, Standard Brands Incorporated, 625 Madison Avenue, New York, NY 10022. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 113459 (Sub-127TA), filed November 9, 1978. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, OK 73142. Representative: Robert Fisher, P.O. Box 94850, Oklahoma City, OK 73142. *Iron or steel forgings in the rough*, from Claremore, OK, to Clinton, IA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Kyle Forge Company, 1400 Industrial Blvd., Claremore, OK 74117. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 113908 (Sub-454TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). *Cat litter*, (in bulk, in bags, or in containers), in straight loads or in mixed shipments with fertilizer and de-icer, from Viroqua, WI, and the commercial zone thereof, to points in AR, CO, IL, IN, IA, KS, KY, MI, MO, MT, MN, NE, ND, OH, OK, SD, TN, WY (note exceptions on application), for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Howard Johnson Enterprises, Viroqua, WT. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 113908 (Sub-456TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). *Flour*, (in bulk), from Minneapolis, St. Paul, Hastings, and Wabasha, MN, and their respective commercial zones, to Springfield, MO, and its respective commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Kraft, Inc., Chicago, IL. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 114211 (Sub-387TA), filed November 15, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *Iron and steel articles*, from Granite City and Alton, IL, to John Deere, Des Moines Works, Ankeny, IA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Deere, Des Moines Works, P.O. Box 1595, Des Moines, IA 50306. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 114632 (Sub-185TA), filed November 9, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David Peterson, P.O. Box 287, Madison, SD 57042. *Gypsum, gypsum products and materials and supplies used in the manufacture, installation and distribution of gypsum products*, between the facilities of Georgia-Pacific Corporation, Gypsum division located at Cuba, MO., on the one hand, and, on the other, all points in the United States, (except Hawaii), for 180 days. SUPPORTING SHIPPER(S): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010 (Robert A. Cronk Trans-Supervisor) SEND PROTESTS TO: J. L. Hammond DS, ICC, Room 455 Federal Building, Pierre, SD 57501.

MC 114725 (Sub-92TA), filed November 9, 1978. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald W. Wynne, (same address as applicant). *Waste water treatment sludge*, from Rochester, MN, to Missouri City, MO, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Browning-Ferris Industries, Inc., Edd D. Thomas Line Manager, P.O. Box 183, Liberty, MO 64068. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 117147 (Sub-11TA), filed November 9, 1978. Applicant: STARR'S TRANSPORTATION, INC., Upper Main Street, North Troy, VT 05859. Representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood hardboard, particle-board, gypsum board, molding, supplies and accessories* used in the installation thereof, from Chesapeake, VA, to points in Vermont, New Hampshire, Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, Pennsylvania and D.C., under a continuing contract, or contracts, with Weyerhaeuser Company, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Weyerhaeuser Company, P.O. Box 1188, Chesapeake, VA 23320. SEND PROTESTS TO: David A. Demers DS, ICC, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 117165 (Sub-47TA), filed November 6, 1978. Applicant: ST. LOUIS FREIGHT LINES, INC., 1111 U.S. Highway, Michigan City, IA 46360. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Salt*, (in bags), from Michigan City, IN, to points in IL and WI, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Diamond Crystal Salt Company, 916 South Riverside Avenue, St. Clair, MI 48079. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 117765 (Sub-248TA), filed November 9, 1978. Applicant: HAHN TRUCK LINE, INC., 1100 South MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan, 1100 South MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. *Malt beverages*, in containers, from St. Paul MN, to TX, for 180 days. An un-

derlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Lone Star Beer Company, Inc., 581 Garden Oaks Blvd., Houston, TX 77018. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 NW., 3rd, Oklahoma City, OK 73102.

MC 118989 (Sub-209TA), filed November 15, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Rolland K. Draves, 5223 South 9th Street, Milwaukee, WI 53221. *Plastic articles*, from the facilities of Hercules Incorporated at Terre Haute, IN., to the facilities of Proctor & Gamble at Fort Madison, IA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Hercules Incorporated, 814 Commerce Drive, Oakbrook, IL 60521. SEND PROTESTS TO: Gail Daugherty Trans. Asst., ICC, U. S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 118989 (Sub-210TA), filed November 15, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Rolland K. Draves, 5223 South 9th Street, Milwaukee, WI 53221. *Metal containers and metal can ends*, between the plants of Carnation Co., at Oconomowoc and Waupun, WI., and Proctor and Gamble plant and warehouses located in Cincinnati, OH., commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carnation Co., 39526 Marks Road, P. O. Box 87, Oconomowoc, WI 53066. SEND PROTESTS TO: Gail Daugherty Trans. Asst., ICC, U. S. Federal Bldg., & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119399 (Sub-84TA), filed November 9, 1978. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, Joplin, MO 64801. Representative: Dean Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. *Carbonated beverages, non alcoholic*, from Lenexa, KS., to points in OK., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Shasta Beverages, Hayward, CA 94545. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119399 (Sub-85TA), filed November 9, 1978. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, Joplin, MO 64801. Representative: David L. Sitton (same address as applicant). *Zinc Oxide*, from Hillsboro, IL., to all points in Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin and WY., for 180 days. SUPPORTING SHIPPER(S): Eagle Picher Industries, Inc., P. O. Box 1328, Joplin, MO. 64801. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119496 (Sub-15TA), filed November 9, 1978. Applicant: THE JAMES GIBBONS CO., 1700 Sutton Avenue, Baltimore, MD 21227. Representative: L. C. Major, Jr., P.O. Box 11278, 6121 Lincolnia Road, Alexandria, VA 22312. *Packaged petroleum products*, (except in bulk), from the plantsite of Witco Chemical Corporation, Kendall/Amalie Division, located in Bradford, PA., to Baltimore, MD., for subsequent movement by water, and empty containers on return, for 180 days. SUPPORTING SHIPPER(S): George L. Keller TM, Witco Chemical Corporation, 77 N. Kendall Avenue, Bradford, PA 16701. SEND PROTESTS TO: William L. Hughes DS, ICC, 1025 Federal Building, Baltimore, MD 21201.

MC 119634 (Sub-29TA), filed November 14, 1978. Applicant: DICK IRVIN, INC., P.O. Box F, Shelby, MT 59474. Representative: Charles R. Irvin (same address as applicant). *Agricultural chemicals*, from Chicago, IL., and St. Joseph, MO., to Great Falls, MT and Minot, ND., for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Mike Thomas Mgr., Wilbur Ellis Company, P. O. Box 1627, Great Falls, MT 59401. SEND PROTESTS TO: Paul J. Labane DS, 2602 First Avenue North, Billings, MT 59101.

MC 121107 (Sub-18TA), filed November 9, 1978. Applicant: PITT COUNTY TRANSPORTATION CO., INC., P.O. Box 207 Farmville, NC 27828. Representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. (1) *Materials, supplies and equipment*, (except commodities in bulk, in tank vehicles), used in the processing, packing, storing, handling, and marketing of tobacco, and (2) *unmanufactured tobacco* when moving on the same vehicle at the same time with the commodities described above, between points in Florida, Georgia, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee, Virginia and WV., for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Philip Morris, USA, P. O. Box 26603, Richmond, VA. 23261. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Building, 310 New Bern Avenue, P. O. Box 26896, Raleigh, NC. 27611.

MC 124328 (Sub-125TA), filed November 9, 1978. Applicant: BRINK'S INC., P.O. Box 1125, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Currency*, from Great Falls to Helena, MT., under a continuing contract or contracts, with Federal Reserve Board, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Board of Governors of the Federal Reserve System, Federal Reserve Board, 20th and C Streets, N.W., Washington, DC 20551. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 124656 (Sub-12TA), filed November 15, 1978. Applicant: JOHN LONG TRUCKING, INC., 1030 Denton Street, Sapulpa, OK 74066. Representative: Dean Williamson, 280 National Foundation Life Building, 3535 N.W., 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles*, From Muskogee and Ada, OK., to points in Idaho, Montana, Nevada, Oregon, Utah, Washington, and WY., under a continuing contract, or contracts, with Brockway Glass Co., Inc., of Muskogee, OK., for 180 days. SUPPORTING SHIPPERS(S): Brockway Glass Co., Inc., P. O. Box 8, Muskogee OK 74401. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 133095 (Sub-217TA), filed November 9, 1978. Applicant: EEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Boulevard, Euless, TX 76039. Representative: Ralph B. Matthews, 1200 Gas Light Tower, 235 Peachtree Street, N.E. Atlanta, GA 30303. *Materials, equipment and supplies used in the manufacture of drugs, medicines, nutritional and anti-coagulant solutions, distilled water and commodities used in the administration thereof*, from points in the states of Delaware, Illinois, Indiana, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Tennessee, and WI., to the facilities of McGaw Industries, Inc., division of American Hospital Supply at Milledgeville and Atlanta, GA., for 180 days. SUPPORTING SHIPPER(S): McGaw Laboratories, P. O. Box 11887, Santa Ana, CA 92711. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133095 (Sub-No. 218TA), filed November 15, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Paper and paper products and materials* used in the manufacturing of paper and paper products, (1) from Chester, PA., to GA and AL.; and (2) from Atlanta, GA., to AL. RESTRICTION: Restricted to traffic originating at or destined to the facilities of Scott Paper Company, for 180 days. SUPPORTING SHIPPER(S): Scott Paper Company, Scott Plaza 1, Philadelphia, PA. 19113. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133908 (Sub-No. 455TA), filed November 9, 1978. Applicant: ERICKSON TRANSPORT, P.O. Box 3180, Springfield, MO 65804. Representative: Bill Whitehead (same address as applicant). *Citrus distillers solubles,* (in bulk), from Lake Alfred, FL., and the commercial zone, to Macon, GA and the commercial zone, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Florida Distillers Company, Lake Alfred, FL 33805. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 135237 (Sub-No. 6TA), filed November 3, 1978. Applicant: EAST PENN TRUCKING CO., R.D. No. 1, Lehighton, PA 18325. Representative: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108. *Coal,* (in bulk, in dump vehicles), from points in Carbon, Luzerne, and Schuylkill Counties, PA., to Philadelhia, PA., Camden, NJ., and Wilmington, DE, and their commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): F. A. Potts & Co., Inc., P.O. Box 594, Pottsville, PA 17901. SEND PROTESTS TO: Paul J. Kenworthy DS, ICC, 314 U.S. Post Office Bldg., Scranton, PA 18503.

MC 138469 (Sub-No. 91TA), filed November 9, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. *Such commodities as are dealt in by used by Pottery and Pottery Supply Stores,* (except commodities in bulk, in tank vehicles), from Edgar, FL; Macon and McIntyre, GA; Mayfield, KY; High Hill, MO; Spruce Pine, NC; Oak Hill, OH and Custer, SD to the facilities of Earth and Fire Pottery Supply, Oklahoma City, OK., restricted to shipments originating at the named origins and destined to the named destinations, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Earth & Fire Pottery Supply, 1101 Enterprise Avenue Bay 13, Oklahoma City, OK 73128. SEND PROTESTS TO: Connie Stanley Trans. Asst., Room 240 Old Post Office & Court House Bldg., 215 N.W., 3rd, Oklahoma City, OK 73102.

MC 139193 (Sub-No. 90TA), filed November 9, 1978. Applicant: ROBERTS & OAKE, INC., Blue Ridge Tower, Suite 820, 4240 Blue Ridge Boulevard, Kansas City, MO 64135. Representative: Jacob P. Billig, 2033 K Street, NW., Suite 300, Washington, D.C. 20006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Usual meat descriptions,* from Montgomery, AL., to all points in the U.S. (except Alaska, Alabama and Hawaii), restricted to a transportation service, performed under a continuing contract or contracts, with John Morrell & Co., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): John Morrell & Co., Chicago, IL. SEND PROTESTS TO: John V. Barry DS, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 140241 (Sub-No. 34TA), filed November 9, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Roundridge, KS 67107. Representative: William B. Barker, 641 Harrison Street, Topeka, KS 66603. *Shredded rubber,* (in bags), from Wichita, KS., to points in the United States, (except Alaska and Hawaii), for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Sealing and Asphalt Specialists, 2900 E. 33rd St., Wichita, KS 67219. SEND PROTESTS TO: M. E. Taylor DS, ICC, 101 Litwin Building, Wichita, KS 67202.

MC 141921 (Sub-No. 30TA), filed November 9, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03103. Representative: John A. Sykas (same address as applicant). *Meat, meat products and meat by-products and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Illini Beef Packing at or near Geneseo, IL to points in Maine, Massachusetts, New Hampshire, Vermont, Connecticut, Rhode Island and NY., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Illini Beef Packers, Inc., P.O. Box 245, Geneseo, IL 61254 Attn: Joe Leamen Traffic Manager. SEND PROTESTS TO: Ross J. Seymour DS, ICC, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 141921 (Sub-No. 31TA), filed November 9, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). *Meat, meat products and meat by-products and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides, skins, and commodities in bulk), from the facilities of United Packing Company at Denver, CO to points in New York, New Jersey, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and ME., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): United Packing Company, 5000 Clarkson Street, Denver, CO 80216. (Attn: M. J. Cloughesy Distribution Manager) SEND PROTESTS TO: Ross J. Seymour DS, ICC, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 143183 (Sub-No. 4TA), filed November 9, 1978. Applicant: L. M. ROACH, d.b.a. D & L TRUCKING CO., P.O. Box 1741 (Sampson Road 145), Wilmington, NC 28401. Representative: Ralph McDonald, 336 Fayetteville Street Mall, P.O. Box 2246, Raleigh, NC 27602, *Salt (in bulk, in pneumatic tanks), from the facilities of Carolina Salt Company at or near Wilmington, NC., to points in SC., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Carolina Salt Company, Box Number 26, Wilmington, NC 28401. SEND PROTESTS TO: Archie W. Andrews DS, ICC, 624 Federal Bldg., 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.*

MC 143328 (Sub-No. 11TA), filed November 9, 1978. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue NW., Washington, DC 20036. (1) *Malt beverages,* from St. Paul, MN, to points in MT and WA, (2) *Malt beverages,* from LaCrosse, WI, to points in WA, and (3) *Empty containers,* from points in MT and WA to St. Paul, MN, and LaCrosse, WI., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): G. Heileman Brewing Company, P.O. Box 459, LaCrosse, WI 54601. SEND PROTESTS TO: Paul J. Labane DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 144090 (Sub-No. 2TA), filed November 9, 1978. Applicant: RED LETTER TRUCKING CO., 250 Mt. Lebanon Boulevard, Pittsburgh, PA 15234. Representative: Stanley E. Levine, Wick, Vuono, & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219.

Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beet pulp pellets*, from Findlay and Freemont, OH., to points in PA., points in Chatauqua, Cattaraugus, and Erie Counties, NY and points in Washington and Frederick Counties, MD., under a continuing contract, or contracts, with Jesse C. Stewart Co., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Jesse C. Stewart Co., 250 Mt. Lebanon Blvd., Pittsburgh, PA 15234. SEND PROTESTS TO: John J. England DS, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 144117 (Sub-No. 19TA), filed November 9, 1978. Applicant: T.L.C. LINES, INC., 1666 Fabric, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 206 West Touhy Avenue, Park Ridge, IL 60068. *Charcoal briquettes, vermiculite, charcoal lighter fluid, hickory chips, fireplace logs, and barbeque cooking utensils*, (except commodities in bulk), from the facilities of The Kingsford Co., at Jacksonville, TX., to points in Arizona, California, Colorado, New Mexico, Nevada and UT, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): The Kingsford Company, P.O. Box 1033, Louisville, KY 40201. SEND PROTESTS TO: P. E. Biner DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 144122 (Sub-No. 33TA), filed November 9, 1978. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. *Hospital supplies and drugs*, (except in bulk), from the facilities of Abbott Laboratories at North Chicago, IL; to Baltimore, MD; Boston, MA; Jersey City, NJ; King of Prussia and Pittsburgh, PA; Los Angeles and San Francisco, CA; Seattle, WA; and Cleveland and Toledo, OH, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Abbott Laboratories, 14th Street and Sheridan Road, North Chicago, IL 60604. SEND PROTESTS TO: Joel Morrows DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144540 (Sub-No. 1TA), filed November 8, 1978. Applicant: JOHNSON BROTHERS TRUCKING CO., INC., 211 Spring Street, Herndon, VA 22070. Representative: James Anton, 1133 Munsey Building, 1329 E Street NW., Washington, DC 20004. *Stone*, from points in Loudoun, Arlington and Fairfax Counties, Richmond and Fredericksburg, VA., to the District of Columbia and points in MD., for 180 days. SUPPORTING SHIPPER(S): Super Concrete Corporation, 3058 K Street, NW., Washington, D.C. SEND PROTESTS TO: Theresa Statuti Trans., Consumer Specialist, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 145513 (Sub-No. 1TA) filed November 9, 1978. Applicant: SERVICE TRANSPORTATION, INC., 526 Second Avenue North, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Apple juice, apple cider, and vinegar*, (1) From Fruitland, ID and points in its commercial zone, to points in CA and (2) from Payson, UT, to Fruitland, ID and points in its commercial zone, under a continuing contract, or contracts, with Payette Cider and Vinegar, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Payette Cider and Vinegar, P.O. Box 528, Fruitland, ID 83619. SEND PROTESTS TO: Barney L. Hardin DS, ICC, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 145565 (Sub-1TA), filed November 9, 1978. Applicant: C. D. BRESHEARS, d.b.a. J & B SERVICES, 1307 South Lincoln, Casper, WY 82601. Representative: C. D. Breshears, 1307 South Lincoln, Casper, WY 82601. *Machinery, equipment, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, including machinery, equipment, materials, and supplies used in the mining industry, restricted against the transportation of complete drilling rigs, between points in Wyoming, North Dakota, South Dakota, Utah, Colorado, Idaho and MT, for 180 days. An underlying ETA seeks up to 9 days authority. SUPPORTING SHIPPER(S): There are approximately (10) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Paul A. Naughton DS, ICC, Room 105 Federal Bldg., & Court House, 111 South Wolcott, Casper, WY 82601.

MC 145663 (Sub-1TA), filed November 14, 1978. Applicant: TRANSPOLAR XPRESS, INC., 5611 N.W., Oakridge Court, Kansas City, MO 64151. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, (except hides and commodities in bulk), from the facilities owned or utilized by George A. Hormel & Co., at Rockville, MO, to all points in GA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): George A. Hormel & Co., P.O. Box 800, Austin MN 55912. SEND PROTESTS TO: Vernon V. Coble DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO. 64106.

MC 145675 (Sub-1TA), filed November 9, 1978. Applicant: L. C. WASHBURN AND GARY WASHBURN, a partnership, d.b.a. WASHBURN TRUCKING, CO., Route 3, Box 208, Boaz, AL 35957. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. *Lumber*, from the facilities of East Highlands Company, Forest Products Division, at or near Albertville, Marshall Co., AL., to points in Georgia, Kentucky, Tennessee, Indiana, Ohio and IL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): East Highlands Company, P.O. Box 746, Albertville, AL 35950. SEND PROTESTS TO: Mabel E. Holston Trans. Asst., ICC, Room 1616, 2121 Building, Birmingham, AL. 35203.

MC 145698 (Sub-1TA), filed November 9, 1978. Applicant: VPA TRUCKING SERVICE, INC., Greenbush Road, Orangeburg, NY 10962. Representative: Lawrence E. Lindeman, Woods, Villalon, Hollengreen & Lindeman, 425 Pennsylvania Avenue & 11th Street NW., Suite 1032, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Automobile parts and accessories, tools and equipment*, between New York, on the one hand, and, on the other, New Jersey, Connecticut, and PA, under a continuing contract, or contracts, with World-Wide Volkswagen Corp., for 180 days. SUPPORTING SHIPPER(S): World-Wide Volkswagen Corp., Greenbush Road, Orangeburg, NY 10962. SEND PROTESTS TO: Maria B. Kejss Trans. Asst., ICC, 26 Federal Plaza, New York, NY 10007.

MC 145717 (Sub-1TA), filed October 31, 1978. Applicant: DAKOTA TRANSPORT, INC., Box 115, Ft. Pierre, SD 57501. Representative: Mark Menard, Rentschler's Truck Plaza, P.O. Box 480, Sioux Falls, SD. 57101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation pivot systems, pipe products, pumps, motors, fittings, concrete pipe, and pipeline installation equipment;* from Stockton, CA; Pueblo, CO; Waukeegan, IL; Minneapolis and St. Paul, MN; Deshler, NE; McPherson, KS; Portland and McNary, OR; and Deni-

son, TX; to points in South Dakota, Nebraska, Wyoming, Colorado, Minnesota, and North Dakota, under a continuing contract, or contracts, with Morris Irrigation, Inc., for 180 days. SUPPORTING SHIPPER(S): Morris Irrigation, Inc. Highway 14-34, P.O. Box 1162, Pierre, SD 57501. SEND PROTESTS TO: J. L. Hammond DS, ICC, Room 455 Federal Building, Pierre, SD 57501.

MC 145738 (Sub-1TA), filed November 9, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Serby & Mitchell, Lenox Towers, 5th Floor, 3390 Peachtree Road, NE., Atlanta, GA 30326. *Industrial chemicals and cleaning compounds*, (except in bulk), from Claymont, DE; Panama City, FL; Gordon, GA; Decatur, IN; Donaldsonville, LA; Baltimore, MD; Everett, MA; Wyandotte, MI; St. Louis, MO; Piscataway, NJ; Philadelphia, PA; Corpus Cristi, TX; Houston, TX; and Hiawassee, VA to the facilities of A. J. Lynch & Company in Berkeley and Los Angeles, CA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): A. J. Lynch & Company, 4560 E. 50th Street, Los Angeles, CA 90058. SEND PROTESTS TO: Floyd A. Johnson DS, ICC, 100 North Main Street, 100 North Main Building, Suite 2006, Memphis, TN 38103.

MC 145742 (Sub-1TA), filed November 15, 1978. Applicant: BOLES TRUCKING, INC., R. R. #1, Ina, IL 62846. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires*, between St. Louis, MO, and Mt. Vernon, IL *and tires, materials, supplies, and machinery* used in the manufacture of tires, between Mayfield, KY, and Mt. Vernon, IL, for the account of The General Tire & Rubber Company, Akron, OH, under a continuing contract, or contracts, with The General Tire & Rubber Company, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Joseph S. Vatalaro Director of Trans., The General Tire & Rubber Company, One General Street, Akron, OH 44329. SEND PROTESTS TO: Charles D. Little DS, ICC, 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 145751 TA, filed November 9, 1978. Applicant: RUSSELL A. PYE TRUCKING, INC., Route 3, Box 345, Ontario, OR 97914. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. (1) *Wooden "I" beams;* and (2) *equipment, materials and supplies* used in the manufacturing of wooden "I" beams; (1) From the facilities of Ore-Ida Wood I Systems, Inc., at or near Ontario, OR to points in the states of Arizona, California, Colorado, Idaho, New Mexico, Nevada and UT; and (2) from points in the States of Arizona, California, Colorado, Idaho, New Mexico, Nevada and UT to the facilities of Ore-Ida Wood I Systems, Inc., at or near Ontario, OR, for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Ore-Ida Wood "I" Systems, Inc., P.O. Box 584, Ontario, OR 97914. SEND PROTESTS TO: Barney L. Hardin DS, ICC, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 145823 TA, filed November 3, 1978. Applicant: DANIEL B. ROEIDER, Route 5, Box 205, Wapakoneta, OH 45895. Representative: David A. Turano, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. *Soybean meal*, (in bulk), from the facilities of Cargill, Inc., at or near Sidney, OH, to points in Indiana, Kentucky, Michigan, Ohio, Pennsylvania and WV, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Cargill, Inc., 2400 Industries, Drive, Sidney, OH 45365. SEND PROTESTS TO: ICC, 313 Federal Office Bldg., 234 Summit Street, Toledo, OH 43604.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-36188 Filed 12-28-78; 8:45 am]

[7035-01-M]

[Finance Docket No. 28909F]

BURLINGTON NORTHERN, INC.

Trackage Rights Over Duluth, Missabe and Iron Range Railway Co. and Duluth, Winnipeg and Pacific Railway Co. near Virginia, Minn.

Burlington Northern, Inc. (BN), 176 East Fifth Street, St. Paul, Minn. 55101 represented by Robert L. Bartholic, Shirley A. Brantingham, and Leah M. Stetzner, 176 East Fifth Street, St. Paul, Minn. 55101, hereby give notice that on the 24th day of November, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for a decision approving and authorizing BN to acquire trackage rights over line owned by the Duluth, Missabe and Iron Range Railway Company (DM&IR) and line owned by the Duluth, Winnipeg and Pacific Railway Company (DWP). BN also seeks amendment pursuant to Section 5(10) of the Act to amend the operating authority granted it in Finance docket No. 20892, *Great Northern Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company.*

BN seeks authority to obtain trackage rights over lines owned by the DM&IR and DWP which would allow direct access by BN to the recently constructed Minorca Mine and taconite pellet plant facilities of Inland Steel, near Virginia, Minn. Such rights to BN are bridge rights limited to traffic to and from the Minorca facility.

There are two separate segments of track involved for which ICC authority is needed plus a mine spur track for which no authority is needed. The first segment (Connecting tract) is a 0.9 mile portion of the DM&IR line between Virginia, Minn., and Emmert, Minn. BN was granted authority in Finance Docket No. 20892, *Great Northern Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company* to operate over these DM&IR tracks as a bridge. BN requests the Commission to amend this authority to allow an entrance and exit at Shelton, Minn., for operation over DWP tracks as a bridge to the Minorca Mine and facilities.

The second segment (DWP track) is the DWP trackage which connects the DM&IR line between Virginia and Emmert, Minn., to the mine spur owned by DM&IR leading to the Minorca facilities. The mine spur owned by the DM&IR leads from the DWP track to the Minorca Mine and plant.

In the opinion of BN, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28909F and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than February 12, 1979. Such written comments shall in-

clude the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-36348 Filed 12-28-78; 8:45 am]

[7035-01-M]

[Docket No. 37039; Ex Parte No. 349]

IDAHO INTRASTATE FREIGHT RATES AND CHARGES—1978

Decided: December 20, 1978.

The Idaho railroads (petitioners) [1] have requested this Commission to institute an investigation of their Idaho intrastate freight rates and charges under sections 13 (3), (4), and (5) and 15(a)(4) of the Interstate Commerce Act, now 49 U.S.C. sections 10704, 11501, 11502, and 11701. They seek an order authorizing them to increase these rates and charges in the same amount as the Commission approved for interstate rates and charges in Ex Parte No. 349, served June 7, 1978.

On May 4, 1978 petitioners requested the Idaho Public Utilities Commission (IPUC) to authorize the same increases as they sought in Ex Parte No. 349. On August 15, 1978, they amended their request, to seek only the increases ultimately authorized in Ex Parte No. 349. On September 6, 1978, IPUC denied the request, for the reason that the petitioners did not break down their intrastate expenses or investments.

Petitioners have presented grounds which justify an investigation.

It is ordered:

The petition is granted. An investigation is instituted. The Commission shall determine whether to prescribe Idaho intrastate rail freight rates or charges to remove unlawful discrimination.

All common carriers by railroad operating in Idaho subject to the jurisdiction of this Commission are made respondents.

All persons who wish to participate in this proceeding and file and receive copies of pleadings shall notify the Office of Proceedings, room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before January 15, 1979. Persons having common interests should consolidate their presentations to the greatest extent possible.

The Commission will serve a list of names and addresses of all persons upon whom service of pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or modified procedure.

A copy of this order shall be served on respondents, and copies shall be sent by certified mail to IPUC and the Governor of Idaho. Copies shall also be deposited in the Office of the Secretary of the Commission at Washington, D.C. and filed with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

This is not a major action significantly affecting the quality of the human environment.

By the Commission, Alan M. Fitzwater, Director, Office of Proceedings.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-36349 Filed 12-28-78; 8:45 am]

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[1] Petitioners are Union Pacific Railroad Company, Burlington Northern Inc., The Camas Prairie Railroad Company, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, The Spokane International Railroad Company, and Washington, Idaho and Montana Railway.

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-M]

1

[M-186]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., December 18, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Negotiations with the Dutch.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Negotiations with the Dutch are being held in Washington, D.C. on Friday, December 15, 1978, the Dutch made a proposal which will be taken up again this week. The Department of State has requested the immediate view of the Board. Accordingly, the following Members have voted that agency business requires that the Board meet on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey

This meeting will concern the ongoing negotiations with the Dutch and the Board's views of the appropriate United States position. Premature public disclosure of the options, plans and opinions of the Board could seriously compromise the United States ability to successfully resolve this issue in the best interests of the United States. Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting will be closed:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey

PERSONS EXPECTED TO ATTEND

Board members

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey

Assistants to board members

Mr. Sanford Rederer
Mr. David M. Kirstein
Mr. Elias Rodriguez
Mr. Stephen H. Lachter

Office of the Managing Director

Mr. John R. Hancock

Bureau of International Aviation

Mr. Donald A. Farmer, Jr.
Mr. Donald L. Litton
Mr. Anthony M. Largay
Mr. Evans E. Wiley

Bureau of Pricing and Domestic Aviation

Ms. Barbara A. Clark
Mr. Doug Leister

Office of the Secretary

Mrs. Phyllis T. Kaylor
Ms. Deborah Lee
Ms. Louise Patrick

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting be closed to public observation.

GARY J. EDLER,
Acting General Counsel.

[S-2608-78 Filed 12-27-78; 11:08 am]

[6730-01-M]

2

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 4, 1979.

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:

1. Report on Notation Items disposed of during November, 1978.

2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during November, 1978.

3. Report of the Secretary on Applications for Admission to Practice approved during November, 1978, pursuant to delegated authority.

4. Assignment of Informal Dockets by the Secretary during November, 1978.

5. Agreement No. T-3014 between Compania Anonima Venezolana De Navegacion, Compania Peruana De Vapores and Prudential Lines, Inc., providing for sharing of expenses and revenues at Brooklyn, New York.

6. Agreements Nos. 10346 and 10349—Petitions for stay of orders of approval.

7. Special Docket No. 580: D. F. Young, Inc. v. Compagnie Nationale Algerienne de Navigation—Review of Initial Decision.

Portion closed to the public:

1. Issuance of section 21 Orders against independent ocean freight forwarders.

2. Docket No. 77-60: Agreement No. 5700-26 (Modification of a Conference Agreement)—Consideration of record.

[FR S-2609-78 Filed 12-27-78; 11:08 am]

[7527-01-M]

3

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME AND DATE: 9:30 a.m.-3 p.m., January 5, 1979.

PLACE: Sheraton Park Hotel, Thomas Paine Room, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: Theme Conference on Literacy:

Welcome
Introduction of Members of Planning Committee
Review on Planning Activity to Date
Conference Details
Senator McGovern's Resolution
Proposal from Literacy Action, Inc.
Other Business

CONTACT PERSON FOR FURTHER INFORMATION:

Jean-Anne South, Program and Planning Consultant, White House Conference on Library and Information Services, 1717 K Street NW., Suite 601, Washington, D.C. 20036, 202-653-6252.

Dated: December 22, 1978.

ALPHONSE F TREZZA,
Executive Director.

[S-2610-78 Filed 12-27-78; 11:39 am]

[7910-01-M]

4

RENEGOTIATION BOARD.

DATE AND TIME: 9:30 a.m., Tuesday, January 2, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Dow Corning Corporation, fiscal years ended December 31, 1967, 1968, and 1969.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 26, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-2612-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

5

RENEGOTIATION BOARD.

DATE AND TIME: 10 a.m., Wednesday, January 3, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 and 2 are open to public observation. Matters 3 and 4 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Meeting held December 19, 1978, and other Board meetings, if any.
2. Recommendation for Clearance: Southwestern Refining Company, Inc., fiscal year ended December 31, 1973.
3. Approval of Agenda for meeting to be held January 17, 1979.
4. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. S-2613-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

6

RENEGOTIATION BOARD.

DATE AND TIME: 9:30 a.m., Thursday, January 11, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Wallace-Murray Corporation, fiscal year ended December 31, 1969.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. S-2614-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

7

RENEGOTIATION BOARD.

DATE AND TIME: 1 p.m., Monday, January 15, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Gentex Corporation, fiscal year ended December 31, 1969.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-2615-78 Filed 12-27-78; 2:56 pm]

[7910-01-M]

8

RENEGOTIATION BOARD.

DATE AND TIME: 1 p.m., Monday, January 22, 1979.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED:

Stupp Corporation, fiscal year ended July 31, 1975.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: December 27, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[FR Doc. S-2616-78 Filed 12-27-78; 2:56 pm]

[3810-70-M]

9

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

TIME AND DATE: 8 a.m., January 8, 1979.

PLACE: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014 (rooms A1-024, A1-017, and A2-054).

MATTERS TO BE CONSIDERED:

8 a.m.—*Meeting—Educational Affairs Committee:* (1) Faculty appointments; (2) graduate program in biochemistry; (3) policy regarding faculty nominations by the Surgeons General; (4) revised policy on appointments, promotions, and tenure for faculty.

8 a.m.—*Meeting—Administrative Affairs Committee:* (1) Report—Assistant Dean for Administration—(a) Construction update, (b) color scheme for increment II; (2) report—Director Resource Management—Budget and financial plan; (3) Tour—Animal facilities.

8:45 a.m.—*Meeting—Board of Regents:* (1) Report—Administrative Affairs Committee; (2) Report—Educational Affairs Committee; (3) Report—Acting President; (4) Report—Dean, School of Medicine; (5) Report—1978 Liaison Committee on Medical Education Visit; (6) Report—Area Medical Schools Clerkships at National Naval Medical Center and Walter Reed Army Medical Center; (7) Report—4th Year Curriculum; (8) Report—Civilian Federal Service in Fulfillment of Active Duty Obligation; (9) Report—Status of Legislation; (10) Report—Continuing Medical Education Program; (11) Report—1979 Calendar for Board of Regents Meetings (11-12 November, 1979); (12) Report—Associate Dean, School of Medicine—(a) Liaison Committee on Medical Education Self Study, (b) Admissions (Present Status); (14) Report—Departmental Program Review; Randall K. Holmes, M.D., Ph. D., Chairman, Department of Microbiology.

New business.

Scheduled meetings: March 19, 1979.

CONTACT PERSON FOR MORE INFORMATION:

Frank M. Reynolds, Executive Secretary of the Board, 202-295-2111.

Dated: December 26, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[S-2611-78 Filed 12-27-78; 12:54 pm]

federal register

FRIDAY, DECEMBER 29, 1978

PART II

DEPARTMENT OF LABOR

Office of the Secretary and Employment and Training Administration

■

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

Transitional Regulations and Promulgation of Annual Area Wage Adjustment Index

[4510-30-M]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR, DEPARTMENT OF LABOR

PART 93—TRANSITIONAL REGULATIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

Final Regulations

AGENCY: Department of Labor.

ACTION: Final regulations.

SUMMARY: This part promulgates transitional regulations concerning maximum and supplemented wage rates, eligibility, and fraud and abuse provisions applicable to all programs under the Comprehensive Employment and Training Act (CETA), as amended. The purpose of this notice is to advise all interested parties of the changes made in the above areas by the 1978 amendments to the CETA.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION CONTACT:Q04

Roberts T. Jones, Director, Office of Community Employment Programs, Room 5402, 601 D Street N.W., Washington, D.C. 20213, Telephone: (202) 376-6366.

SUPPLEMENTARY INFORMATION: The CETA Amendments of 1978 (Pub. L. 95-524) was signed by the President on October 27, 1978. Under Section 4(d) of Pub. L. 95-524, the Department may waive the requirements as to rulemaking in implementing the fraud and abuses provisions and the provisions in Section 4(c)(1) (i.e., supplemented and maximum wage rates and eligibility) which become effective after the end of the 90-day period beginning on October 27, 1978. Accordingly, these provisions are being implemented in final form. Where these new regulations implementing the new CETA amendments conflict with the existing CETA regulations, these new regulations issued under the amended law shall control.

While these regulations are being promulgated in final form, the entire set of CETA regulations is currently being drafted and will appear in the FEDERAL REGISTER for public comment. This proposal when drafted will provide for complete recodification in Title 20 of the current regulations in Parts 93-99 of Title 29 of the CFR.

Accordingly, Title 29 of the CFR is amended by adding a new Part 93 to read as follows:

Sec.

93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).
93.2 Supplementation provisions.
93.3 Participant eligibility—Sections 213, 221 (a) and (b), 236, 122(j), and 607.
93.4 Fraud and abuse provisions.

AUTHORITY: Sec. 4(d), Pub. L. 95-524, 92 Stat. 2018 (29 U.S.C. 801 note).

§ 93.1 Maximum wage rates allowable to be paid with CETA funds: Fringe benefits—Sections 122(i) (1) and (3).

(a) The Secretary shall issue and publish annually an area wage adjustment index, which shall include the maximum wage rates for each prime sponsor's area. The wage adjustment index shall be based on the ratio that the annual average wages in regular public and private employment in an area served by a prime sponsor bears to the average of all such areas—

(1) Data on average annual wages shall be derived from information provided by employers to State Employment Security Agencies which are responsible for administering State and Federal unemployment insurance (UI) laws. Each quarter of the year, employers in both the private and public sectors of the economy covered by UI laws are required to submit reports containing data on a complete count of workers during the payroll period including the 12th of each month and the total wages paid to all employees for the calendar quarter. Each covered employer is requested to report employment and wages in the county where workers are employed.

(2) The average annual wage for each county shall be computed as the ratio of total wages paid during the calendar year to average monthly employment for the year in the respective counties. In cases where CETA areas represent county combinations and portions of counties, the average annual wage is computed as a weighted average of the wages in component counties based on relative employment in each. In those instances where more than one CETA area is contained entirely within a county, the average annual wage for each prime sponsor is that for the county as a whole, as the basic payroll data are not produced below the county level.

(b) Wages, including money received for overtime work and time on leave, paid to any public service employment participant from funds under the Act is limited to a full-time rate of $10,000 per year (or the hourly, weekly, or monthly rate which, if annualized, would equal a full-time rate of $10,000 per year), except where this maximum is adjusted upward by the Secretary to the amount set forth in the area wage adjustment index described above in paragraph (a). This $10,000 shall not be adjusted upward by more than 20 percent, except for Alaska. In Alaska, the amount in the area wage adjustment index shall be computed by adjusting the $10,000 upward by the exact percentage that the area wage index exceeds the national average wage index.

(c) Fringe benefits to any PSE participants may not exceed those regularly afforded to similarly employed non-CETA workers, but shall never exceed those afforded to non-CETA workers earning an amount equal to the maximum wage.

§ 93.2 Supplementation provisions.

(a) *Supplementation Under Title II D Programs—Section 122(i)(4).* (1) Except as provided in paragraphs (a) (2) and (3) of this section no public service employed participant may be paid wages for any public service employment job from sources other than the Act when such an additional amount would result in a wage in excess of the maximum allowable under § 93.1. This applies even if a participant is entitled to a promotion, a general salary increase or overtime pay. In such cases, such participants must be transferred to other positions or be terminated.

(2) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wages was $10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted upward above $10,000 after September 30, 1978.

(3) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than $10,000 may have such wages supplemented above $10,000 from non-CETA sources after September 30, 1978, if such increase is a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position.

(b) *Supplementation Under Title VI Programs—Section 609. Wages paid to public service employees may be supplemented above the maximum wage for the area by additional wages from non-CETA sources only if:*

(1) The total amount of funds used in any fiscal year to provide such supplemental wages does not exceed an amount equal to 10 percent of the prime sponsor's Title VI allocation for such fiscal year; and

(2) Such wage supplementation to any public service employee does not exceed:

(i) Ten percent of the maximum wage applicable for the prime sponsor's area; or

(ii) Twenty percent of the maximum wage applicable for the prime sponsor's area in any area where the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the national average wage in such employment.

(3) Any person in a public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section. However, where such person was receiving such wages on September 30, 1978, and the amount of the CETA portion of the wage was $10,000, the non-CETA portion shall not be reduced if the maximum wage has been adjusted above $10,000 after September 30, 1978.

(4) Any person in a public service employment position on September 30, 1978, who was receiving wages on September 30, 1978, less than $10,000 may have such wages supplemented above the $10,000 from non-CETA sources after September 30, 1978, if such increase is the result of a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position. These wages are not subject to the limitations of paragraphs (b)(1) and (2) of this section.

(5) When a public service employment participant, hired after September 30, 1978, is eligible for a promotion, a general salary increase or overtime pay, the employer shall pay from non-CETA funding sources that amount in excess of the maximum amount payable from CETA funds as well as a pro-rata share of the increased fringe benefits, unless such payment would be in violation of the limitations on public service wage supplementation contained in paragraph (b)(1) of this section. If such payment would be in violation, then the participants affected must be transferred to other positions or be terminated.

§ 93.3 Participant Eligibility—Sections 213, 221(a) and (b), 236, 122(j), and 607.

(a) *Title II B Programs.* A person shall be eligible to participate in a program funded under Title II B only if such person is: (1) Economically disadvantaged; and (2) either unemployed, underemployed, or in school.

(b) *Title II D PSE Programs.* An eligible individual must be a person:

(1) Who is economically disadvantaged; who is unemployed at the time of application, and who except for AFDC recipients, has been unemployed during 15 of the 20 weeks immediately prior to application; and

(2) Who resides within the prime sponsor's jurisdiction.

(i) Except as authorized under paragraph (b)(2)(ii) of this section, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(ii) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(3) No individual shall be eligible to be employed in a public service employment position if such individual has, within six months prior to the determination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(4) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(C) *Title VI PSE Programs.*

An eligible individual must be a person:

(1)(i) Who, except for AFDC recipients, has been unemployed for at least 10 out of the 12 weeks immediately prior to application for participation, and

(ii) Who is unemployed at the time of application; and

(iii) Whose family income does not exceed 100 percent of the lower living standard income level, annualized based on the three-month period prior to the individual's application for participation, and

(iv) Who resides within the prime sponsor's jurisdiction.

(A) Except as authorized under paragraph (B) below, a program agent or a unit of general local government of 100,000 or more which is not a prime sponsor may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection.

(B) A prime sponsor or program agent may receive additional funds as a subgrantee of another prime sponsor or program agent to enroll residents of the other prime sponsor or program agent's jurisdiction.

(2) No individual shall be eligible to be employed in a public service employment position if such individual has, within 6 months prior to the determination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under Section 6(a)(1) of the Fair Labor Standards Act.

(3) Notwithstanding any eligibility limitation on public service employment, a person who on September 30, 1978, held a public service employment position under the Act may continue in such position subject to the length of participation limitations in Section 122(h) of the Act.

(4) In filling teaching positions in elementary and secondary schools, each prime sponsor shall give special consideration to persons with previous teaching experience who are certified in the prime sponsor's State.

(d) *Indian and Native American, and Migrant and Seasonal Farmworkers PSE Programs.* (1) The current regulations apply for PSE funded under Sections 302 and 303; and

(2) These requirements apply for PSE funded under Titles II D and VI.

(e) *Definitions for Participant Eligibility Determinations.*

The following are the definitions necessary for the determination of participant eligibility:

(1) *Economically Disadvantaged*—means a person who is either:

(i) A member of a family which receives public assistance;

(ii) A member of a family whose income during the previous 6 months, on an annualized basis, was such that—

(A) The family would have qualified for public assistance, if it had applied for such assistance, or

(B) It does not exceed the poverty level, or

(C) It does not exceed 70 percent of the lower living standard income level;

(iii) A foster child on whose behalf State or local government payments are made;

(iv) A client of a sheltered workshop;

(v) A handicapped individual who is living at home and who is unemployed;

(vi) Institutionalized in a prison, hospital, or similar institution; or

(vii) A regular outpatient of a mental hospital, rehabilitation facility, or similar institution.

(2) *Family*—means, except as provided in paragraph (e)(2) (ii) or (iii),

(i) One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage.

(ii) Except for any person who would be eligible for assistance under Title V of the Older Americans Act of 1965 or a handicapped individual who is 16 years of age or older, anyone claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed to be a part of that person's family for the current year.

(iii) An individual 18 or older, who receives less than 50 percent of his/her maintenance from the family, and who is not the head nor the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family of one.

(3) *Family Income*—means all income received from all sources by all members of the family.

(i) Family income shall include:

(A) Gross wages and salary (before deductions), except wages paid for work experience under the Act, but including wages and salary received by individuals in public service employment or on-the-job training;

(B) Net self employment income (gross receipts minus operating expenses);

(C) Other money income received from sources such as net rents, OASI social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities, and other sources of income.

(ii) Family income shall exclude:

(A) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(B) Imputed value of owner-occupied property i.e., rental value;

(C) Public assistance payments;

(D) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or Disability Insurance payments received under Title II of the Social Security Act;

(E) Federal, State or local unemployment benefits;

(F) Payments made to participants in employment and training programs, except wages paid for PSE and OJT;

(G) Capital gains and losses;

(H) One time, unearned income, such as but not limited to:

(*1*) Payments received for a limited, fixed term under income maintenance programs and supplemental (private) unemployment benefit plans;

(*2*) (One-time) or fixed-term scholarship and fellowship grants;

(*3*) Accident, health, and casualty insurance proceeds;

(*4*) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(*5*) One-time awards and gifts;

(*6*) Inheritances, including fixed term annuities;

(*7*) Fixed term workers' compensation awards;

(*8*) Terminal leave pay;

(*9*) Soil bank payments;

(*10*) Agriculture crop stabilization payments;

(I) Allowances or pay received by any person while serving on active duty in the Armed Forces; and

(J) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(K) Payments received under the Trade Readjustment Act and the Redwood Forest Act.

(4) *Lower Living Standard Income Level*—means that income level (adjusted for selected Standard Metropolitan Statistical Areas and regional metropolitan and nonmetropolitan differences and family use) determined annually by the Secretary based upon the most recent lower living family budget level issued by the Bureau of Labor Statistics.

(5) *Low income level*—means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship of $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(6) *Public assistance*—means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

(7) *Underemployed persons*—means (i) Persons who are working part time but seeking full time work; and

(ii) Persons who are working full time but receiving wages, not in excess of, the higher of either:

(A) The poverty level; or

(B) Seventy percent of the lower living standard income level.

(8) *Unemployed persons*—means for purposes of determining eligibility

(i) A person who is without a job for at least seven consecutive days prior to application for participation. A person shall be considered as being without a job if, for any calendar week, such person;

(A) Worked no more than 10 hours, and

(B) Earned no more than $30, and

(C) Was seeking and available for work; or

(ii) A person who is

(A) A client of a sheltered workshop;

(B) A prisoner eligible for, or in, a work release program, or

(C) Institutionalized in a hospital or similar institution; or

(iii) A person who is 18 years of age or older whose family receives public assistance, or whose family would be eligible to receive public assistance if both parents were not present in the home; or

(iv) A person who is a veteran who has not obtained permanent unsubsidized employment since being released from active duty.

§ 93.4 Fraud and abuse provisions.

Section 4(b) of the CETA Amendments of 1978 provides for the implementation of provisions relating to the prohibition of fraud and other abuses. Currently, the October 18, 1977, regulations and the appropriate OMB circulars referenced in those regulations contain the majority of the fraud and abuse provisions found in the new CETA Amendments. Since the October 18, 1977, regulations remain in effect, regional offices should instruct prime sponsors of the necessity for their continued compliance with the current requirements.

In addition, the following provisions implement sections in the CETA Amendments of 1978 that prescribe either more specific requirements than in the previous legislation or new fraud and abuse provisions:

(a) *Maintenance of Effort—121(e).* (1) Although the following provisions are substantially the same as those which currently appear in the October 18, 1977, regulations it should be noted that under this new legislation they now apply to all programs under CETA, not just PSE programs.

(2) To ensure maintenance of effort under all programs under the Act—

(i) The recipient shall ensure that such programs—

(A) Result in an increase in employment and training opportunities over those which would otherwise be available;

(B) Not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits; and

(C) Not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(ii) No participant shall be used to provide services normally provided by temporary, part-time or seasonal workers or through contracting such services out, or to fill full-time vacancies, unless documentation is maintained that clearly demonstrates that such action does not constitute the use of funds under the Act for purposes

that otherwise would be supported by other funds.

(iii) Funds under the Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs.

(b) *Unionization and Anti-unionization Activities—Sections 121(n) and 123(g).* (1) No funds under the Act shall be used in any way to either promote or oppose unionization.

(2) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains union security provisions.

(c) *Independent Monitoring Unit—Section 121(g).* (1) Prime sponsors shall establish a monitoring unit which shall be independent of, and not accountable to, those units in a prime sponsor's organization being monitored. Such a unit shall be functionally discrete from program operations and shall be responsible for monitoring program compliance. Prime sponsors shall immediately initiate organizational adjustments necessary to provide for this unit to be in place and fully functioning by April 1, 1979.

(2) The prime sponsor shall ensure that this monitoring unit is adequately staffed and trained.

(3) The prime sponsor shall further require each subgrantee, which has the administrative capability as determined by the prime sponsor, to establish and maintain an independent monitoring unit which shall monitor the subgrantee's program through review of program data, observation of program operations and examination of program records to ensure compliance with

(i) The Act and the regulations;

(ii) The provisions of its subgrant;

(iii) The provision of subgrants awarded by it.

(d) *Charging of Fees—Section 123(g).* (1) No funds shall be used to pay a fee for the placement of any person in a program under this Act.

(2) No person or organization, including private placement agencies, may charge a fee for the placement or referral of any person in or to such program.

(3) Any contract for payment of such fees shall be void in law and no participant shall be liable for such fees.

(4) Nothing in this section shall prohibit the recipient from entering into a subgrant or contract for the purpose of obtaining outreach, recruitment and/or intake services as part of its approved intake system.

(e) *Conflicts of Interest—Section 123(g).* (1) No member of any advisory council under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which such member directly represents) or on any matter which would financially benefit such member or any organization such member represents.

(2) Each recipient and its employees shall avoid financial conflict of interest in the conduct of procurement activities, including the procurement activities of its subgrantees and contractors by complying with the recipient code of conduct requirements set forth in Office of Management and Budget (OMB) Circulars A-102, Attachment 0 and A-110, Attachment 0.

No nongovernmental individual, insititution or organization shall be paid funds provided under the Act to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

(f) *Kickbacks—Section 123(g).* No officer, employee or agent of any recipient shall solicit or accept gratuities, favors or anything of monetary value from any person in return for preferential treatment.

(g) *Commingling of funds—Section 123(g).* Recipients shall comply with the applicable requirements of OMB Circular A-102, Attachment A and A-110, Attachment A, regarding separate bank accounts.

(h) *Political Patronage—Section 123(g).* (1) No recipient may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage, whether partisan or not, is prohibited.

(2) There shall be no referrals for CETA jobs or training, nor selection of subgrantees or contractors based on political affiliation.

(i) *Political Activities—Section 123(g).* No program may involve partisan or nonpartisan political activities.

(1) No participant may engage in partisan or nonpartisan political activities during working hours.

(2) No participant may at any time engage in partisan or nonpartisan political activities in which such participant represents himself/herself as a spokesperson for the CETA program.

(3) No participant may be employed or outstationed in the office of a member of Congress or a State or local legislator. No person shall be employed in a legislative capacity on any legislative committee or staff.

(4) No participant may be employed or outstationed in positions involving political activities in the offices of other elected or appointed officials, such as Mayors, County Executives, or Governors, or as staff of Executive Committees. Placement of participants in such nonpolitical positions is permissible.

(j) *Lobbying Activities—Section 123(g).* No funds may be used—

(1) To attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress (18 U.S.C. 1913); or

(2) For lobbying State or local legislators.

(k) *Religious and Anti-religious Activities—Section 123(g).* (1) No funds may be used in support of any religious activity. Funds may not be used to support anti-religious activities.

(2) No participant may be employed in the construction, operation, or maintenance of any part of any facility that is used or will be used for sectarian instruction or as a place of religious worship.

Signed this 19th day of December 1978 at Washington, D.C.

F. RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-35883 Filed 12-28-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA) PRIME SPONSORS

Promulgation of the Annual Area Wage Adjustment Index

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice promulgates the annual area wage adjustment index for Fiscal Year 1979 as required under Section 122(i)(3) of the Comprehensive Employment and Training Act Amendments of 1978.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Roberts T. Jones, Director, Office of Community Employment Programs, Room 5402, 601 D Street, N.W., Washington, D.C. 20213, Telephone: (202) 376-6366.

U.S. DEPARTMENT OF LABOR,
EMPLOYMENT AND TRAINING ADMINISTRATION,
Washington, D.C. 20213.

Directive: Field Memorandum No. 75-79.
To: All Regional Administrators.
From: Barbara Farmer for Don A. Balcer, Acting Administrator, Field Operations.
Subject: Maximum CETA PSE Wages and Annual Average Wages for Prime Sponsors.

1. *Purpose.* To transmit the annual area wage adjustment index for FY '79.

2. *Background.* Section 122(i) of the CETA Amendments of 1978 provides that CETA funds shall not be used to pay wages to any individual employed in a public service job at a rate in excess of $10,000 per year, but such maximum shall be adjusted upward for particular areas served by prime sponsors as determined by the Secretary on the basis of a wage adjustment index. This maximum annual wage provision becomes effective on January 26, 1979. Section 122(i) also provides that the annual federally supported wage rate for public service employment participants shall not exceed $7,200, adjusted on an area basis in accordance with the area wage adjustment index. The annual average wage provision is effective on April 1, 1979.

3. *Methodology used to compute the annual area wage adjustment index.*

a. Data on average annual wages are derived from information provided by employers to State Employment Security Agencies which are responsible for administering State and Federal unemployment insurance (UI) laws. Each quarter of the year, employers in both the private and public sectors of the economy covered by UI laws are required to submit reports containing data on a complete count of workers during the payroll period including the 12th of each month and the total wages paid to all employees for the calendar quarter. Each covered employer is requested to report employment and wages in the county where workers are employed.

b. The average annual wage for each county is computed as the ratio of total wages paid during the calendar year to average monthly employment for the year in the respective counties. In cases where CETA areas represent county combinations and portions of counties, the average annual wage is computed as a weighted average of the wages in component counties based on relative employment in each. In those instances where more than one CETA area is contained entirely within a county, the average annual wage for each prime sponsor is that for the county as a whole, as the basic payroll data are not produced below the county level.

4. *Application of the area wage adjustment index.* a. Specific instructions for application of maximum wage provisions which are effective on January 26, 1979, shall be included in the transition provisions which will be transmitted by FM and also published in the FEDERAL REGISTER.

b. Instructions regarding the application of the annual average wage provisions which are effective on April 1, 1979, will be included in the proposed and final CETA Regulations to be published in the FEDERAL REGISTER.

5. *Action required.* Regional offices are to immediately transmit the attached index to prime sponsors for use in the planning of programs under title IID and title VI and in the preparation of modifications due in the regional offices on December 31, 1978.

6. *Inquiries.* Any questions regarding this issuance may be directed to Hugh Davies or Joan Shelly on 8-376-7006.

7. *Attachment.* (RAs only) 1977 Average Annual Wages and Index for Prime Sponsors.

[4510-30-C]

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
ALABAMA			
Birmingham Consortium (Jefferson County)	100.8	10080	7258
Huntsville Consortium (Madison County)	106.0	10600	7632
Tuscaloosa County	87.2	10000	6635
Mobile Consortium	90.2	10000	6635
Montgomery Consortium	85.1	10000	6635
Balance of Alabama	83.2	10000	6635
ALASKA			
Anchorage Municipality Division	183.3	18330	13198
Balance of Alaska	198.8	19880	14314
ARIZONA			
Phoenix City	96.4	10000	6941
Tuscon/Pima Csrt (Pima Cn.)	87.9	10000	6635
Bal of Maricopa Co Less Phoenix	96.4	10000	6941
Bal of Arizona	91.5	10000	6635
ARKANSAS			
Central Arkansas Consortium	89.3	10000	6635
Balance of Arkansas	76.1	10000	6635
Texarkana Consortium (Arkansas Texas)	87.6	10000	6635
CALIFORNIA			
Berkeley City	114.8	11480	8266
Oakland City	114.8	11480	8266
Butte County	82.3	10000	6635
Richmond City	107.0	10700	7704
Fresno Csrt (Fresno Cn.)	81.1	10000	6635
Humboldt County	98.4	10000	7085
Imperial County	73.9	10000	6635
Kern County	95.2	10000	6854
Glendale City	109.9	10990	7913

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Long Beach City	109.9	10990	7913
Los Angeles City	109.9	10990	7913
Pasadena City	109.9	10990	7913
Torrance City	109.9	10990	7913
Marin County	92.2	10000	6638
Merced County	73.3	10000	6635
Monterey County	88.4	10000	6635
Orange County Manpower Consortium (Orange Cn.)	101.2	10120	7286
Sacramento Consortium	113.0	11300	8136
San Diego Retc (San Diego Cn.)	96.7	10000	6962
San Francisco City/County	124.1	12000	8935
Stockton/San Joaquin Manp. Csrt. (San Joaquin Cn.)	92.2	10000	6638
San Luis Obispo County	87.5	10000	6635
San Mateo County	120.0	12000	8640
Santa Barbara County	89.7	10000	6635
Sunnyvale City	114.7	11470	8258
Santa Cruz County	78.7	10000	6635
Shasta County	99.0	10000	7128
Solano County	109.3	10930	7870
Sonoma County	90.4	10000	6635
Stanislaus County	86.5	10000	6635
Tulare County	71.0	10000	6635
Ventura County	95.8	10000	6898
Yolo County	89.2	10000	6635
Balance of Alameda Co. Less Oakland and Berkeley	114.8	11480	8266
Balance of Contra Costa County Co. Less City of Richmond	107.0	10700	7704
Inland Manpower Assoc	90.3	10000	6635
Bal of Los Angeles Co Less Glendale, Long Bch, Pasadena, LA, & Torrance	109.9	10990	7913
Santa Clara Valley	114.7	11470	8258
Balance of California	84.4	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
COLORADO			
Adams County	99.7	10000	7178
Arapahoe County	96.9	10000	6977
Boulder County	96.4	10000	6941
Denver City/County	108.5	10850	7812
Colorado Springs Consortium (El Paso County)	83.0	10000	6635
Jefferson County Consortium	102.5	10250	7380
Larimer County	84.9	10000	6635
Pueblo County	101.0	10100	7272
Weld County	93.0	10000	6696
Balance of Colorado	80.9	10000	6635
CONNECTICUT			
Bridgeport Consortium	110.4	11040	7949
Hartford Consortium	103.4	10340	7445
New Haven Consortium	95.6	10000	6883
Stamford Consortium	113.1	11310	8143
Waterbury City	95.6	10000	6883
Balance of Connecticut	100.2	10020	7214
DELAWARE			
Wilmington City	113.6	11360	8179
Delaware Manp. Consortium	104.3	10430	7510
DISTRICT OF COLUMBIA			
District of Columbia	132.5	12000	9540
FLORIDA			
Alachua County	82.4	10000	6635
Brevard County	97.0	10000	6984
Broward Consortium (Broward County)	90.8	10000	6635
Escambia County	89.8	10000	6635
Hillsborough Consortium (Hillsborough County)	89.1	10000	6635
Lee County	80.3	10000	6635
Manatee County	78.5	10000	6635
Marion County	73.1	10000	6635
Okaloosa County	81.2	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Orange County/Orlando Consortium (Orange County)	87.3	10000	6635
Palm Beach County	92.4	10000	6653
Pasco County	72.3	10000	6635
Pinellas County Consortium (Pinellas County)	81.4	10000	6635
Sarasota County	81.5	10000	6635
Seminole County	76.8	10000	6635
Volusia County	73.9	10000	6635
Heartland Manpower Consortium	84.7	10000	6635
Leon/Gadson Consortium	82.5	10000	6635
Miami/Dade Consortium	97.5	10000	7020
N.E. Florida Manpower Consortium	92.6	10000	6667
Balance of Florida	76.6	10000	6635
GEORGIA			
Savannah/Chatham Consortium (Chatham County)	90.6	10000	6635
Clayton County	102.9	10290	7409
Cobb County	94.3	10000	6790
Bal of DeKalb County, Co. Less City of Atlanta (Part)	101.0	10100	7272
Atlanta City	109.3	10930	7870
Gwinnett Co	97.4	10000	7013
Columbus Area Consortium(Georgia Part, Columbus SMSA)	81.6	10000	6635
CSRA Consortium	82.4	10000	6635
Bal of Fulton County Less City of Atlanta (Part)	109.7	10970	7898
Mid Georgia Consortium	92.9	10000	6689
Balance of Georgia	77.0	10000	6635
HAWAII			
Honolulu City/County	89.5	10000	6635
Hawaii Bal of State	81.3	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
IDAHO			
Idaho Statewide Consortium	89.5	10000	6635
ILLINOIS			
Chicago City	116.9	11690	8417
Dupage County	107.8	10780	7762
Lake County	107.3	10730	7726
LaSalle County	100.8	10080	7258
McHenry County	95.6	10000	6883
McLean County	94.0	10000	6768
Macon County	109.1	10910	7855
Peoria County Consortium	108.8	10880	7834
Rock Island County	122.9	12000	8849
Tazewell County	137.1	12000	9871
Champaign Consortium	88.3	10000	6635
Bal of Cook County, Co. Less Chicago City	116.9	11690	8417
Kane Co. Csrt	96.5	10000	6948
Madison County Consortium	108.0	10800	7776
Rockford Consortium	108.8	10880	7834
Sangamon County Consortium	94.8	10000	6826
Shawnee Consortium	78.8	10000	6635
St. Clair Consortium	93.9	10000	6761
Will County Consortium	109.6	10960	7891
Balance of Illinois	90.8	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11 425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
INDIANA			
Elkhart County	97.5	10000	7020
Gary City	126.2	12000	9086
Hammond City	126.2	12000	9086
La Porte County	93.1	10000	6703
Madison County	121.1	12000	8719
Indianapolis City/ Marion Co	110.0	11000	7920
South Bend City	97.6	10000	7027
Tippecano County	96.2	10000	6926
Vigo County	93.8	10000	6754
Delaware Consortium	100.5	10050	7236
Ft. Wayne Consortium	99.9	10000	7193
Bal of Lake County, Co. Less Cities of Gary and Hammond	126.2	12000	9086
Southwestern Consortium	97.5	10000	7020
Bal of St. Joseph County, Co. Less South Bend City	97.6	10000	7027
Balance of Indiana	93.3	10000	6718
IOWA			
Blackhawk County	110.6	11060	7963
Linn County Manpower Consortium	103.2	10320	7430
Davenport City	105.6	10560	7603
Woodbury County	90.4	10000	6635
Central Iowa Regional Assn. of Local Governments	95.1	10000	6847
Balance of Iowa	84.7	10000	6635
KANSAS			
Wichita City	95.9	10000	6905
Topeka Consortium (Shawnee County)	92.9	10000	6689
Kansas City Consortium (Wyandotte County)	111.9	11190	8057
Johnson/Leavenworth Consortium	94.4	10000	6797
Balance of Kansas	81.0	10000	6635
KENTUCKY			
Louisville/Jefferson Consortium (Jefferson County)	102.8	10000	7402

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Kenton County	82.4	10000	6635
Blue Grass Manpower Consortium	89.7	10000	6635
Eastern Kentucky Rural Cep	102.9	10290	7409
Balance of Kentucky	84.4	10000	6635
LOUISIANA			
Shreveport City	90.4	10000	6635
Baton Rouge City/East Baton Rouge Parish	103.3	10330	7438
Jefferson Parish	97.1	10000	6991
Lafayette Parish	98.0	10000	7056
New Orleans City/Orleans Parish	98.9	10000	7121
Quachita Parish	91.6	10000	6635
Rapides Parish	78.1	10000	6635
Calcasieu/Jeff Consortium	101.4	10140	7301
Balance of Lousianna	93.8	10000	6754
MAINE			
Cumberland County	84.2	10000	6635
Kennebec County	83.6	10000	6635
York County	70.2	10000	6635
Penobscot Consortium	82.4	10000	6635
CETA Balance of Maine	75.9	10000	6635
MARYLAND			
Montgomery County	108.7	10870	7826
Prince Georges County	97.8	10000	7042
Baltimore Consortium	100.3	10030	7222
Western Maryland Consortium	92.3	10000	6646
Balance of Maryland	77.7	10000	6635
MASSACHUSETTS			
Boston City	108.4	10840	7805
Cambridge Consortium	103.7	10370	7466

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Worcester Consortium	90.4	10000	6635
Hampden County (Springfield Consortium)	89.7	10000	6635
Brockton Consortium	82.3	10000	6635
Lowell Consortium	103.7	10370	7466
New Bedford Consortium	79.2	10000	6635
Fall River Consortium	79.1	10000	6635
CETA Balance of Massachusetts	93.4	10000	6725
MICHIGAN			
Bay County	108.1	10810	7783
Berrien County	100.6	10060	7243
Calhoun County	111.1	11110	7999
Kalamazoo County	107.3	10730	7726
Warren City	132.5	12000	9540
Monroe County	113.1	11310	8143
Oakland County	120.7	12000	8690
Ottawa County	93.0	10000	6696
Saginaw County	128.2	12000	9230
St. Clair County	99.8	10000	7186
Ann Arbor City	118.1	11810	8503
Dearborn City	134.2	12000	9662
Detroit City	134.2	12000	9662
Livonia City	134.2	12000	9662
Bal of Washtenaw Co Less Ann Arbor City	118.1	11810	8503
Flint/Genessee Consortium	135.8	12000	9778
Jackson Consortium	105.6	10560	7603
Kent Consortium	99.2	10000	7142
Lansing Consortium	113.7	11370	8186
Bal of Macomb County, Co. Less City of Warren	132.5	12000	9540
Muskegon Consortium	102.0	10200	7344
Bal of Wayne Co Less Detroit, Dearborn, and Livonia	134.2	12000	9662
Balance of Michigan	90.5	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
MINNESOTA			
Dakota County	91.1	10000	6635
Minneapolis City	102.6	10260	7387
St. Paul City	106.6	10660	7675
Duluth City	94.5	10000	6804
Bal of Hennepin Co. Less City of Minneapolis	102.6	10260	7387
Bal of Ramsey County, Co. Less St. Paul City	106.6	10660	7675
Region III Consortium	94.3	10000	6790
Rural Minnesota CEP	68.3	10000	6635
Quad Counties Consortium	92.1	10000	6635
Balance of Minnesota	77.5	10000	6635
MISSISSIPPI			
Harrison County	76.1	10000	6635
Jackson Consortium	88.5	10000	6635
Balance of Mississippi	76.6	10000	6635
MISSOURI			
Springfield City	84.2	10000	6635
Independence City	104.4	10440	7517
St. Charles County	87.7	10000	6635
St. Louis County	106.3	10630	7654
St. Louis City	111.8	11180	8050
Bal of Jackson Co Less Cities of Independence & Kansas (PART)	104.4	10440	7517
Jefferson/Franklin Consortium	82.1	10000	6635
Kansas City Consortium	104.9	10490	7553
Balance of Missouri	74.5	10000	6635
MONTANA			
Butte Rural CEP	93.3	10000	6718
Balance of Montana	83.7	10000	6635
NEBRASKA			
Lincoln City	80.9	10000	6635
Omaha Consortium (Nebraska Part, Omaha SMSA)	95.3	10000	6862
Balance of Nebraska	76.7	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
NEVADA			
Las Vegas Csrt. (Clark Cn.)	99.1	10000	7135
Washoe County	97.2	10000	6998
Balance of Nevada	93.3	10000	6718
NEW HAMPSHIRE			
Hillsborough County	86.4	10000	6635
Rockingham/Strafford Consortium	78.0	10000	6635
Balance of New Hampshire	77.7	10000	6635
NEW JERSEY			
Atlantic County	83.3	10000	6635
Bergen County	109.3	10930	7870
Burlington County	95.9	10000	6905
Camden City	100.8	10080	7258
Cumberland County	94.6	10000	6811
Newark City	113.1	11310	8143
Gloucester County	100.6	10060	7243
Hudson County Consortium	108.0	10800	7776
Trenton City	105.5	10550	7596
Middlesex County	113.3	11330	8158
Monmouth County	94.5	10000	6804
Morris County	113.7	11370	8186
Ocean County	82.0	10000	6635
Paterson City	102.2	10220	7358
Somerset County	115.6	11560	8323
Elizabeth City	120.7	12000	8690
Bal of Camden County, Co. Less Camden City	100.8	10080	7258
Bal of Essex County, Co. Less City of Newark	113.1	11310	8143
Bal of Mercer County, Co. Less Trenton City	105.5	10550	7596
Bal of Passaic County Co. Less Paterson City	102.2	10220	7358
Bal of Union County, Co. Less Elizabeth City	120.7	12000	8690
Balance of New Jersey	96.1	10000	6919
NEW MEXICO			
Albuquerque Consortium (Bernalillo County)	90.7	10000	6635
Balance of New Mexico	87.3	10000	6635
NEW YORK			
Albany City	101.2	10120	7286

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Broome County	97.5	10000	7020
Chemung County	91.8	10000	6635
Dutchess County	111.8	11180	8050
Buffalo City	102.1	10210	7351
Rochester City	117.8	11780	8482
Nassau Consortium	101.7	10170	7322
Niagara County	109.3	10930	7870
Oneida County	91.1	10000	6635
Syracuse City	103.4	10340	7445
Orange County	87.4	10000	6635
Oswego County	110.5	11050	7956
Rensselaer County	88.4	10000	6635
Rockland County	93.2	10000	6710
St. Lawrence County	100.1	10010	7207
Saratoga County	94.5	10000	6804
Schenectady County	115.6	11560	8323
Steuben County	109.3	10930	7870
Suffolk Consortium (Suffolk County)	93.8	10000	6754
Ulster County	93.3	10000	6718
Yonkers City	110.8	11080	7978
Bal of Albany County Less Albany City	101.2	10120	7286
Chautauqua Consortium	87.6	10000	6635
Erie Consortium	102.1	10210	7351
Bal of Monroe Co., Co. less Rochester City	117.8	11780	8482
Hempstead Town-Long Beach City Consortium	101.7	10170	7322
New York City	120.7	12000	8690
Bal of Onondaga County, Co Less Syracuse City	103.4	10340	7445
West Chester Consortium	109.7	10970	7895
Balance of New York	84.8	10000	6635
NORTH CAROLINA			
Alamance County	75.1	10000	6635
Buncombe County	81.2	10000	6635
Cumberland County	78.8	10000	6635
Davidson County	75.1	10000	6635
Durham City	97.7	10000	7034
Winston Salem Consortium (Forsyth County)	102.5	10250	7380
Gaston County	81.3	10000	6635
Greensboro Consortium (Guilford County)	90.4	10000	6635
Charlotte City	97.5	10000	7020
Onslow County	71.1	10000	6635
Robeson County	65.8	10000	6635
Bal. of Wake County, Co. Less City of Raleigh	86.4	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Raleigh Consortium	79.7	10000	6635
Balance of North Carolina	76.6	10000	6635
NORTH DAKOTA			
North Dakota Statewide Consortium	83.7	10000	6635
OHIO			
Allen County	104.4	10440	7517
Ashtabula County	94.4	10000	6797
Butler County	115.0	11500	8280
Clark County	97.6	10000	7027
Columbus Consortium (Franklin Co.)	102.1	10210	7351
Greene County	91.7	10000	6635
Cincinnati City	109.3	10930	7870
Lake County	102.1	10210	7351
Lorain County	117.3	11730	8446
Dayton City	115.5	11550	8316
Portage Co	91.6	10000	6635
Scioto County	88.2	10000	6635
Akron Consortium	107.9	10790	7769
Canton Consortium	103.1	10310	7423
Clermont/Warren Consortium	85.2	10000	6635
Cleveland Consortium	115.5	11550	8316
Bal of Hamilton, Co. less Cincinnati City	109.3	10930	7870
Licking/Del Consortium	95.8	10000	6898
Montgomery-Preble Consortium	114.1	11410	8215
North East Ohio Manpower Consortium	109.4	10940	7877
Richland/Morrow Csrt	103.6	10360	7459
Toledo Consortium	112.2	11220	8078
Balance of Ohio	94.7	10000	6818
OKLAHOMA			
Comanche County	75.9	10000	6635
Bal of Cleveland Co. less Oklahoma City (Part)	73.0	10000	6635
Oklahoma City Consortium	96.7	10000	6962
Oklahoma County, Co. less City of Oklahoma (Part)	98.1	10000	7063
Tulsa Consortium	103.6	10360	7459
Balance of Oklahoma	82.3	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
OREGON			
Lane County	98.4	10000	7085
Portland City	107.3	10730	7726
Bal of Clackamas Co. Less Portland City (Part)	98.8	10000	7114
Jackson/Josephine Csrt	93.8	10000	6754
Mid Willamette Valley Consortium	93.0	10000	6696
Multnomah/Washington Consortium	103.8	10380	7474
Balance of Oregon	94.8	10000	6826
PENNSYLVANIA			
Pittsburgh City	112.9	11290	8129
Beaver County	122.8	12000	8842
Berks County	94.0	10000	6768
Bucks County	97.7	10000	7034
Centre County	87.9	10000	6635
Chester County	103.0	10300	7416
Delaware County	103.7	10370	7466
Erie City	97.7	10000	7034
Fayette County	87.3	10000	6635
Franklin County	90.1	10000	6635
Bal of Lackawanna County, Co. Less Scranton City	81.7	10000	6635
Scranton City	81.7	10000	6635
Lawrence County	93.0	10000	6696
Luzerne County	84.6	10000	6635
Montgomery County	107.0	10700	7704
Northumberland County	86.0	10000	6635
Philadelphia City/ County	109.1	10910	7855
Washington County	107.4	10740	7733
Westmoreland County	101.1	10110	7279
York County	95.1	10000	6847
Bal of Allegheny County, Co. Less Pittsburgh City	112.9	11290	8129
Balance of Erie County, Co. Less Erie City	97.7	10000	7034
Lancaster Consortium	90.4	10000	6635
Lehigh Valley Consortium	101.7	10170	7322

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Lycoming Consortium.....	90.2	10000	6635
Mercer Consortium	98.2	10000	7070
Schuylkill Consortium.....	76.2	10000	6635
Southern Allegany Consortium.....	93.1	10000	6703
Susquehanna Consortium	98.3	10000	7078
Tri-County Consortium (Butler Consortium).....	103.5	10350	7452
Balance of Pennsylvania.....	86.5	10000	6635
RHODE ISLAND			
Providence City.....	84.3	10000	6635
Balance of Rhode Island.....	82.0	10000	6635
SOUTH CAROLINA	82.9		
Statewide Consortium.....	82.9	10000	6635
SOUTH DAKOTA			
South Dakota Statewide Consortium	77.5	10000	6635
TENNESSEE			
Nashville/Davidson County (Davidson County).....	91.7	10000	6635
Chattanooga City.....	97.9	10000	7049
Bal. of Hamilton County, Co. (less Chattanooga City)...	97.9	10000	7049
Knoxville Consortium (Knox County).....	85.5	10000	6635
Memphis Consortium (Shelby County).....	94.9	10000	6833
Sullivan County.....	100.8	10080	7258
Balance of Tennessee.....	79.0	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
TEXAS			
Cameron County	71.1	10000	6635
Dallas City	105.5	10550	7296
El Paso Consortium (El Paso County)	79.3	10000	6635
Galveston County	106.0	10600	7632
Houston City	115.8	11580	8338
Webb County	68.0	10000	6635
Alamo Consortium	84.5	10000	6635
Gulf Coast Area Manpower Consortium	101.7	10170	7322
Capital Area Manpower Consortium	82.9	10000	6635
Central Texas Manpower Consortium	78.7	10000	6635
Coastal Bend Manpower Consortium	91.7	10000	6635
Dallas County Consortium	105.5	10550	7596
Ft. Worth Consortium	97.7	10000	7034
Bal. of Harris Co., Less Pasadena Csrt and Houston City	115.8	11580	8338
Hidalgo County Consortium	68.3	10000	6635
Greater Pasadena Consortium	115.8	11580	8338
North Texas State Planning Regional Consortium	80.1	10000	6635
Permian Basin Consortium	102.4	10240	7373
Region XI Consortium	78.4	10000	6635
S.E. Texas Comprehensive Manpower Consortium	115.0	11500	8280
Bal. of Tarrant Co. Less Ft. Worth Csrt and Grand Prairie (Part)	97.7	10000	7034
South Plains Association of Governments	80.4	10000	6635
Texarkana Consortium (Arkansas-Texas)	87.6	10000	6635
Texas Panhandle Employment and Training Alliance Consortium	91.7	10000	6635
West Central Texas Consortium	78.3	10000	6635
East Texas Manpower Consortium	86.0	10000	6635
Balance of Texas	80.6	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
UTAH			
Utah Statewide Consortium	92.6	10000	6667
VERMONT			
Vermont Statewide Consortium	82.7	10000	6635
VIRGINIA			
Arlington County	134.2	12000	9662
Alexandria City	100.3	10030	7222
Fairfax-Loudoun Consortium	101.5	10150	7308
Henrico County Consortium	94.1	10000	6775
Penninsula Consortium	93.2	10000	6710
Prince William County Consortium	97.2	10000	6998
Ramps Consortium	95.5	10000	6876
Roanoke Consortium	87.7	10000	6635
Stama Consortium	87.8	10000	6635
Balance of Virginia	82.4	10000	6635
WASHINGTON			
Clark County	106.0	10600	7632
Kitsap County	117.0	11700	8424
Bal of Pierce County, Co. Less Tacoma City	101.0	10100	7272
Tacoma City	101.0	10100	7272
Spokane Csrt. (Spokane Cn.)	96.9	10000	6977
Yakima County	88.9	10000	6635
King/Snohomish Consortium	113.6	11360	8179
Balance of Washington	103.3	10330	7438
WEST VIRGINIA			
West Virginia Statewide Consortium	102.7	10270	7394
WISCONSIN			
Madison/Dane Consortium (Dane Co.)	95.7	10000	6890
Marathon County	94.9	10000	6833
Milwaukee County	107.7	10770	7754
Outagamie County	96.6	10000	6955
Rock County	102.0	10200	7344
Northwest Wisconsin CEP	75.4	10000	6635

1977 AVERAGE ANNUAL WAGES AND INDEX FOR PRIME SPONSORS

	INDEX (NATIONAL ANNUAL WAGES 11,425 = 100.00)	MAXIMUM WAGES	AVERAGE WAGES
Trico CETAC	100.0	10000	7200
Winne/Fond Consortium	95.4	10000	6869
WOW Consortium	99.0	10000	7128
Balance of Wisconsin	83.9	10000	6635
WYOMING			
Wyoming Statewide Consortium	99.7	10000	7178
PUERTO RICO			
Bayamon Municipio	64.5	10000	6635
Caguas Municipio	64.5	10000	6635
Carolina Municipio	64.5	10000	6635
Mayaguez Municipio	64.5	10000	6635
Ponce Municipio	64.5	10000	6635
San Juan Consortium	64.5	10000	6635
Balance of Puerto Rico	64.5	10000	6635

Signed this 19th day of December 1978 at Washington, D.C.

F. RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-35884 Filed 12-28-78; 8:45 am]

federal register

FRIDAY, DECEMBER 29, 1978

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

URBAN HOMESTEADING PROGRAM

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

[Docket No. R-78-538]

PART 590—URBAN HOMESTEADING PROGRAM

Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule sets forth Urban Homestead program requirements for HUD, local grants, and local government agencies with regard to applications, transfers of Secretary-owned properties, property disposition assistance, HUD program evaluation, performance review and other applicable laws and regulations.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Hugh Allen, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, Tel. (202) 755-6330.

SUPPLEMENTARY INFORMATION: On May 31, 1978, (43 FR 23692) proposed regulations were published in the FEDERAL REGISTER for public comment. Interested parties were given until July 1, 1978, to submit written comments. All comments received with respect to the proposed rules were given consideration. As a result of comments, the following clarifications were made:

LOCAL URBAN HOMESTEADING AGENCY

There were a number of comments stating that the definition of "Local Urban Homesteading Agency" in paragraph 590.5(e) should be expanded to include private non-profit organizations as eligible administering agencies if designated by a unit of general local government or State.

Section 810 of the Housing and Community Development Act of 1974, as amended, clearly states that only a State, a unit of general local government or the designated public agency of a State or unit of general local government may receive title, to HUD's unoccupied single-family houses and carry out a HUD approved urban homesteading program. A local urban homesteading agency, however, may enter into agreements with private non-profit organizations, neighborhood-based nonprofit organizations, small business investment companies and/or local development corporations to provide program related services (e.g., counseling services to homesteaders, neighborhood improvements, financial assistance, repair work). A new paragraph is added at 590.3(h) which defines "private non-profit entity, neighborhood-based nonprofit organization, Small Business Investment Company and local development corporation."

URBAN HOMESTEADING NEIGHBORHOOD

A number of comments stated that paragraph 590.7(a) was unclear as to whether a CDBG entitlement recipient could designate an urban homesteading neighborhood outside of a Neighborhood Strategy Area (NSA).

The Department encourages communities to make urban homesteading an integral part of local Community Development Programs. Use of Neighborhood Strategy Areas (NSA's) as defined by CDBG regulations published March 1, 1978,

Paragraph 570.301(c), to qualify areas as Homesteading areas is intended to facilitate that result. Selection of Homesteading areas is not limited to pre-existing NSA's. The Department encourages selecting an area appropriate to homesteading and then simultaneously applying to designate the area as an NSA if it needs the kind of treatment appropriate to an NSA. HUD does permit, however, the designation of areas which are not NSA's in Paragraph 590.7 (a)(2)(i)-(iii) if:

(1) the applicant is not a recipient of Community Development Block Grant (CDBG) entitlement funds; or

(2) the required public improvements and services will be provided from sources other than CDBG funds; or

(3) the neighborhood selected does not require the concentrated treatment appropriate to an NSA.

Localities in their selection of urban homesteading neighborhoods should, however, take into consideration the availability and suitability of housing stock.

LOCALLY OWNED PROPERTIES

The policy of the Department is to encourage the use of locally-owned property in HUD approved urban homesteading programs. We have added language in paragraph 590.7(a) regarding the designation of urban homesteading neighborhoods to emphasize this policy. Urban Homesteading neighborhoods must have Secretary-owned property or Secretary-owned property and locally-owned property. A locality's program may be approved with only locally-owned property if the designated urban homesteading neighborhood is an area where eligible community development block grant activities are being carried out.

SCATTERED SITE HOMESTEADING

A number of comments recommended that the regulations should permit scattered-site or city-wide homesteading. Section 810 of the Housing and Community Development Act of 1974, states that an urban homesteading program approved by HUD must provide for a coordinated approach toward neighborhood improvement. Paragraph 590.7(b)(6) of the regulations reflects this legislative requirement for a neighborhood focus and consequent prohibits scattered site homesteading.

PRIORITY FOR CERTAIN INCOME GROUPS

There were several comments that suggested that the Urban Homesteading Program should give priority to low-or moderate-income individuals or families. The Section 810 legislation and the progam regulations require that the applicant have an equitable procedure for selecting homesteaders and set two basic criteria to consider in the selection of homesteaders:

(1) the recipient's need for housing, and;

(2) the recipient's capacity to make or cause to be made the repairs and improvements required.

We interpret the legislation to direct a balanced consideration of both need and financial capacity to improve homestead property. HUD has, therefore, chosen not to provide guidelines on determining "need" and not to set an income maximum. Determination of need and the setting of income limits are matters that will be left to the localities since they are the most familiar with their housing markets and the needs in their neighborhoods. HUD does require in Section 590.11(b)(3)(ii) that an applicant certify that it has equitable procedures for the selection of homesteaders.

Early results from the evaluation of the Urban Homesteading Demonstration Program indicate that low- to moderate-income families are being served. The average income for homesteading families in the Demonstration is just over $12,500.

TRANSFER WITHOUT SUBSTANTIAL CONSIDERATION

There were some comments which stated that the regulations should not prohibit a substantial payment for non-Secretary-owned properties transferred to homesteaders. It was pointed out that local statutes or regulations may require payment of nominal fees

or a negotiated price for locally-owned properties under a local program.

Upon consideration of these comments, the regulations have been revised and the transfer of properties without substantial consideration now applies only to those properties that are Secretary-owned and conveyed to localities under the provisions of Section 810. We expect, however, that whenever possible, localities will apply similar procedures to homesteading locally acquired properties and properties acquired from HUD.

Fee Simple Title

Concern was expressed by some comments that conveyance of fee simple title to homestead property after the three-year occupancy period could allow the homesteaders to sell the property and make a windfall profit. The Section 810 legislation clearly states that once the homesteader has complied with the terms of the homesteading agreement, he is to receive fee simple title to the property. Paragraph 590.7(b)(5) of the regulation contains this requirement. The homesteader takes a risk when he agrees to live in and repair a vacant unrepaired property and some possibility of capital gain is a reasonable incentive to attract people to the program.

Revocation Procedures

Some comments were received which indicated that the regulations should be more detailed in the requirement of revocation in paragraph 590.7(b)(4). The proposed regulations provide for revocation of the conditional conveyance upon "any material breach" of the homesteader agreement. This requirement is directly from the Section 810 legislation. States and units, of general local government can, however, be more specific in defining procedures for revocation so long as such procedures are consistent with the statute and regulations.

Some comments recommended that the regulations provide that hearings be held to settle disputes between the local urban homesteading agency and homesteaders or potential homesteaders. The applicant can include procedures for holding hearings as a matter of local discretion.

Some comments suggested that the regulations provide for compensation to a homesteader who due to circumstances beyond his control must give up his homesteading property before the 3-year occupancy period for repairs that he has made. The State or unit of general local government may in its discretion provide compensation for homesteading under such circumstances.

Inspections of Homestead Properties

A comment was received which requested that Section 590.7(b)(3)(iv), local urban homesteading agency, that this section should be revised to permit "designated agents" of the local urban homesteading agency as well as employees of the agency to conduct inspections.

Section 590.7(b)(3)(iv) has been revised to reflect this change.

Occupancy Period

There was some question about the period of occupancy required of the homesteader as stated in the proposed regulations.

We have revised the language in Section 590.7(b)(3)(iii) so that the occupancy requirement is clear and that the three-year period begins with the first day of occupancy.

Conveyance of Unrepaired Property

There were some comments expressing concern that only "unrepaired" properties could be eligible for homesteading.

The Section 810 legislation clearly intends that properties eligible for urban homesteading be in need of repairs. HUD, however, could transfer under Section 810 partially repaired properties or properties that have been repaired and later vandalized and require further repairs. On the other hand, properties for which repair contracts are outstanding may not be transferred.

Rehabilitation Requirements

Some comments requested specific criteria regarding repair standards for homestead properties.

The Section 810 legislation states that the homesteader must agree to:

(1) make repairs required to meet minimun health and safety standards for occupancy prior to occupying the property and then;

(2) makes such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within eighteen months after occupying the property.

Localities have different local code standards. However, it is expected that urban homesteading programs will be in compliance with all local and State laws. It would not be reasonable or possible for HUD to define in the regulations specific requirements for occupancy and for local code standards.

Another comment received stated that the 18-month period for completing repair work is too short and that the regulations leave no leeway for an extension of the 18-month period due to circumstances beyond the control of the homesteader.

The statute is clear and requires that all repairs bringing the property up to local code standards of decent, safe and sanitary housing be completed within 18 months after initially occupying the property.

Counseling

Some comments stated that a counseling program should be required for all participants in the urban homesteading program.

States or units of general local government are encouraged to have counseling programs, but HUD will not require such programs by regulation.

Listing of Secretary-Owned Properties

Some comments received expressed concern that the list of HUD properties that the HUD Area Office is to provide might be out of date. We have included the word "current" before list in Section 590.9(b).

Another comment expressed concern that there was nothing in the regulations for the provision of an accurate and up-to-date property listing on a periodic basis for an urban homesteading program. In Section 590.17(a)(2) (i) and (ii), the regulations provide for the HUD Area Office to notify the local urban homesteading agency of new single-family acquisitions by HUD in the urban homesteading neighborhood.

Application Requirements

Some comments suggested that the regulations should permit the application to be submitted as a part of their CDBG application.

HUD has chosen to have a separate application for homesteading that can be submitted at any time. Part of the requirements for submitting a homesteading application, however, can be statisfied by cross referencing the CDBG application as stated in Paragraph 590.11(a)(2).

State and Areawide Clearinghouse Review (A-95)

Several comments stated that the proposed 60-day advance for the A-95 review would cause an unnecessary and excessive delay in the application review. Paragraphs 590.11(c)(1)-(2) have been revised to permit communities to submit completed applications to appropriate State and areawide clearinghouses prior to or concurrently with the submission of the application to HUD. A new paragraph 590.11(c)(2) states that clearinghouses will have thirty (30) days to review the completed application and transmit to the applicant and to the appropriate HUD Area Office any comments or recommendations. An additional paragraph 590.11(c)(5) prohibits HUD

from approving an application until all comments have been received and considered from the clearinghouses or until the end of the 30-day review period, whichever comes first.

TRANSFER OF SECRETARY-OWNED PROPERTIES IDENTIFIED IN APPLICATION

Some comments expressed objection to 590.13 which states that application approval does not obligate HUD to transfer a specific number or particular properties identified in the application. This language is being retained because the Secretary-owned properties that are available at the time an application is prepared and submitted to HUD may be disposed of before the application is approved. Furthermore, any Secretary-owned properties identified in an application must be determined suitable for transfer in accordance with Section 590.17(b) after the proposed local urban homesteading program is approved by HUD.

TIME LIMIT ON NOTIFYING HUD ABOUT USE OF AVAILABLE PROPERTY

Several comments requested more time in which to inform HUD About the use of property because of requirements of local laws. Paragraph 590.17(a)(2)(ii) is revised to permit the HUD Area Office Manager to extend the 30-day limitation for notifying HUD about the use of potentially available property if this time limitation is unworkable for a community's selection process. The Area Office Manager may also extend the 30-day limit in 590.17(c)(1) for transferring property title to a homesteading agency if the Area Manager determines that the requirement is impractical for the local urban homesteading agency.

FAIR MARKET VALUE LIMIT

Several comments indicated that the "as is condition" fair market value limit of $15,000 set forth in Paragraph 590.17(b)(5)(i) for eligible Secretary-owned property suitable for transfer is too low in some market areas. This paragraph has been retained because an Area Office Manager is given the authority in paragraph 590.17(b)(5)(iii)(A) to waive this limitation if the benefits to the community will be sufficient to justify the waiver.

PROPERTY TRANSFER TO NEIGHBORHOOD NONPROFIT ORGANIZATIONS

Numerous comments expressed objections to the proposed language in paragraph 590.17(c)(3) that would permit an Area Office to transfer a Secretary-owned property that is eligible for use in a local homesteading program to a non-profit organization without receiving concurrence from the local government or urban homesteading agency. This paragraph is revised to require that a HUD Area Office obtain local concurrence before such a property is made available for acquisition by non-profit organizations.

IMPLEMENTING FUNDS

There were comments that asked for clarification of Section 590.19 regarding the reservation of Section 810 funds for acquiring Secretary-owned property and Section 312 rehabilitation loan funds. HUD will administratively earmark Section 810 and Section 312 funds to implement approved local urban homesteading programs.

RELOCATION ASSISTANCE

Some comments expressed confusion regarding the application of relocation assistance to the Urban Homesteading Program in paragraph 590.29(e). If a local urban homesteading agency acquires occupied real property for use in an approved urban homesteading program, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies. When a local homesteading agency obtains title as a result of a default foreclosure or breach of the Urban Homesteading Agreement stated in paragraph 590.7(b)(3), the transfer of title back to the agency is not considered to be an "acquisition" as defined by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The occupant is, therefore, not eligible for relocation assistance.

OTHER INFORMATION

A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1.

Copies of the Finding are available for inspection and copying during business hours in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, an amendment to 24 CFR is promulgated by adding a new Part 590. The Table of Contents to Part 590 is renumbered to read as follows:

PART 590—URBAN HOMESTEADING

Sec.

590.1 Scope of regulation.
590.3 Purpose of program.
590.5 Definitions.
590.7 Program requirements.
590.9 Listing of Secretary-Owned Properties.
590.11 Applications.
590.13 HUD Review and Approval of Application.
590.15 Urban Homesteading Agreement.
590.17 Transfer of Secretary-Owned Properties.
590.19 Implementing Funds.
590.21 Reduction of Funds.
590.23 Program Close-Out. [Reserved]
590.25 Retention of Records.
590.27 Audit.
590.29 Applicable Federal Laws and Regulations.
590.31 HUD Review of Local Urban Homesteading Agency's Performance.
590.33 Corrective and Remedial Action.
590.35 Evaluation by HUD.

AUTHORITY: Sec. 810, Pub. L. 93-383 as amended, 88 Stat. 734 (12 U.S.C. 1706e).

§ 590.1 Scope of regulation.

(a) The policies and procedures in this regulation are applicable to the approval of urban homesteading programs authorized by Section 810 of the Housing and Community Development Act of 1974, as amended.

(b) This part includes the functions and responsibilities of HUD and units of general local government and States or a designated public agency of a State or unit of general local government with regard to program requirments; application requirements; submission of applications; review and approval of applications; transfer of Secretary-owned properties; property disposition assistance; HUD program evaluation; performance review and other applicable Federal laws and regulations.

§ 590.3 Purpose of program.

The purpose of the urban homesteading program is to utilize existing housing stock to provide homeownership, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program will provide for the transfer without payment to States or units of general local government or their designated public agencies Secretary-owned, unoccupied one- to four-family residences requested by such unit, State or agency for use in an aproved urban homesteading program. Reservations under the Section 312 Rehabilitation Loan Program are available to finance rehabilitation of single family or multifamily homestead properties, as well as other properties, within the urban homesteading neighborhoods.

§ 590.5 Definitions.

(a) "Act" means Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended.

(b) "Applicant" means any State or unit of general local government that applies to carry out an urban homesteading program under these regulations.

(c) "Homesteader" means an individual or family who participates in a local urban homesteading program by accepting a property pursuant to the requirements of § 590.7. For locally owned property, it may also mean co-

operatives and condominium associations.

(d) "Locally-owned property" means any real property which is improved with a one- to four-family residence or a multifamily residence not obtained from the Department of Housing and Urban Development and to which the local urban homesteading agency holds title.

(e) "Local Urban Homesteading Agency" means a State, a unit of general local government, or a public agency designated by a unit of general local government or a State, which must have the authority to accept the transfer, without payment, of Secretary-owned property.

(f) "Local Urban Homesteading Program" means the operating procedures, and requirements developed by a local urban homesteading agency in accordance with the provisions of § 590.7.

(g) "Neighborhood Strategy Area (NSA)" means an area selected by a recipient of Community Development Block Grant (CDBG) entitlement funds and designated in its Community Development and Housing Plan for a program of concentrated community development activities whch is defined by the Community Development Block Grant Regulations, Title 24, Chapter V, Part 570, Subpart D, Section 570.301(c).

(h) Private non-profit entity, neighborhood-based nonprofit organization, Small Business Investment Company and local development corporation mean:

(i) A private nonprofit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis;

(ii) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to this Part. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted under this Part are to be carried out;

(iii) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(iv) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695), or other similar entity incorporated pursuant to Federal State, or local law.

(i) "Secretary" means the Secretary of Housing and Urban Development or any person to whom the Secretary has delegated authority for the urban homesteading program.

(j) "Secretary-owned property" means any real property:

(1) Which is improved with a one- to four-family residence;

(2) To which the Secretary holds Title;

(3) Which is not occupied.

(k) "Section 312 Rehabilitation Loan Funds" means loan funds authorized by Section 312 of the Housing Act of 1964, as amended to finance the rehabilitation of urban homesteaded property, as well as other property within the designated urban homesteading neighborhood.

(l) "Section 810 Funds" means the funds authorized under Title VIII, Section 810 of the Housing and Community Development Act of 1974, as amended to reimburse the Department of Housing and Urban Development's housing loan and mortgage insurance funds for the fair market value of Secretary-owned properties transferred to local urban homesteading agencies.

(m) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(n) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, and American Samoa, or in a general purpose political subdivision thereof; The District of Columbia; the Trust Territories of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

(o) "Unoccupied residential property" means either a Secretary-owned property or a locally-owned property that is vacant.

(p) "Urban homesteading neighborhood" means a geographic area(s) approved by HUD for conducting a local urban homesteading program that meets the requirements of § 590.7.

§ 590.7 Program requirements.

An applicant shall meet the following requirements to qualify for assistance under this Part:

(a) *Designation of Urban Homesteading Neighborhood.* It shall designate neighborhood(s) for carrying out urban homesteading. An urban homesteading neighborhood shall have 1) available Secretary-owned properties; 2) Secretary-owned plus locally-owned properties; or 3) pursuant to Section 312(a)(1)(D) of the Housing Act of 1964, as amended, and Title I of the Housing Community Development Act of 1974, a amended, locally-owned properties within designated areas where eligible community development block grant activities are being carried out. An urban homesteading neighborhood shall be in the following areas:

(1) The same as or contained within Neighborhood Strategy Areas designated pursuant to the Community Development Block Grant regulations published March 1, 1978, in the Code of Federal Regulations, Title 24, Chapter V, Part 570, Subpart D—Entitlement Grants, § 570.301(c); or

(2) Another area designated by the applicant, if:

(i) The applicant is not a recipient of community development block grant entitlement funds authorized by Title I of the Housing and Community Development Act of 1974;

(ii) The required public improvements and services will be provided from sources other than community development block grants; or

(iii) The neighborhood selected for urban homesteading requires some improvements but not the concentrated treatment required for a Neighborhood Strategy Area.

(b) *Development of Local Urban Homesteading Program.* It shall develop a program to convey unoccupied residential properties to qualified individuals or families. The program shall provide for the following:

(1) *Homesteader Selection.* It shall provide equitable procedures for homesteader selection giving special consideration to the homesteader's:

(i) Need for housing; and

(ii) Capacity to make or cause to be made necessary repairs and improvements.

(2) *Conditional conveyance.* It shall provide for the conditional conveyance of unoccupied, unrepaired residential property to homesteaders. Property received from the Secretary-owned inventory shall be conditionally conveyed without substantial consideration.

(3) *Homesteader Agreement.* It shall provide for execution of a Homesteader Agreement between the local urban homesteading agency and the homesteader which shall require the homesteader:

(i) To make or cause to be made any repairs required to meet minimum local health and safety housing standards prior to occupying the property;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local

standards for decent, safe, and sanitary housing within 18 months after occupying the property and to comply with any energy conservation measures designated by the local urban homesteading agency as part of the repairs;

(iii) To occupy the property as principal residence for not less than three consecutive years from the initial date of occupancy;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the local urban homesteading agency; and

(4) *Revocation Upon Breach of Agreement.* It shall provide for the revocation of the conditional conveyance upon any material breach of the agreement by the homesteader.

(5) *Fee Simple Title.* It shall provide for the conveyance of the property from the local urban homesteading agency to the homesteader in fee simple title upon full compliance with the terms of the agreement between the local urban homesteading agency and the homesteader.

(6) *Coordinated Approach Toward Neighborhood Improvements.* It shall provide a plan for needed public improvements and services, and community facilities in the Urban Homesteading Neighborhoods.

(i) If the Urban Homesteading Neighborhood is a Neighborhood Strategy Area, then the coordinated approach toward neighborhood improvement for the area described in the applicant's Community Development Block Grant entitlement application, pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) will satisfy this requirement. Such an applicant will cite the appropriate cross reference in its applications.

(ii) For designated urban homesteading neighborhoods that are outside or mostly outside of Community Development Block Grant Neighborhood Strategy Areas of entitlement recipients, the coordinated approach toward neighborhood improvement plan shall include:

(A) A brief description of the area's need for revitalization, community facilities, public services and improvements and housing problems;

(B) A description of the plan that will be implemented to meet the identified needs for upgrading and improving the area; and

(C) A description of the actions to mitigate any adverse effects on low- and moderate-income persons that may result from implementing an urban homesteading program in the designated neighborhood.

§ 590.9 Listing of Secretary-owned properties.

(a) To facilitate the local planning and program development in accordance with the program requirements of § 590.7 a potential applicant may submit a written request to the Manager of the appropriate HUD field office for a listing of all Secretary-owned properties defined in § 590.5(j) within the applicant's jurisdiction.

(b) After receipt of such request HUD shall provide to the potential applicant a current list of those Secretary-owned properties for which repair or sale contracts have not been executed.

§ 590.11 Applications.

(a) *Submission Requirements.* Applications shall be submitted to the HUD Area Office which has jurisdiction over the applicant and shall consist of the following:

(1) Standard Form 424, prescribed by OMB Circular No. A-102;

(2) A description of the coordinated approach toward neighborhood improvement as required by § 590.7(b)(6). An applicant that is applying for Community Development Block Grant (CDBG) entitlement funds may cite the appropriate cross reference in its community development plan pursuant to 24 CFR 570.304(b)(1)(i) (Community Development and Housing Plan) to meet this requirement.

(3) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown. The map shall include:

(i) An estimate of the number and the location of any locally-owned properties to be conveyed to homesteaders during the program's first year;

(ii) An estimate of the number and the location of any Secretary-owned properties requested for use in the proposed urban homesteading program during the program's first year;

(4) A description of the rehabilitation financing plan to be used in the urban homesteading neighborhood(s) which shall include:

(i) An estimate and brief description of terms and conditions of the Federal, State and/or local public funds and any private funding sources that are to be made available for interim and permanent financing of rehabilitation;

(ii) The total number of residential properties for rehabilitation (both homestead properties and other properties);

(iii) An outline of the applicant's proposed schedule(s) and time periods for committing rehabilitation loan funds in its urban homesteading program.

(5) An implementation plan which includes:

(i) The description of the public entity that will carry out the program, including any agreements with private non-profit organizations, neighborhood-based nonprofit organizations, small business investment companies and/or local development corporations, as defined in Secton 590.5(h) to provide program related services (e.g. "counseling" services to homesteaders, marketing activities, neighborhood improvements, financial assistance, rehabilitation).

(ii) A timetable and methods to accomplish the program which includes:

(A) Transferring properties from HUD to the local urban homesteading agency;

(B) Advertising residential properties for homesteading purposes;

(C) Conveying unoccupied, unrepaired residential property to homesteaders; and

(D) A summary of the plan for implementing neighborhood improvements in accordance with 590.7(b)(6)(i)-(ii).

(b) *Certifications.* The applicant shall submit certifications in such form as HUD may prescribe, providing assurances that:

(1) Its governing body has duly adopted or passed as an official act, resolution, motion, or similar action authorizing the filing of the application including all understandings and assurances contained in the application;

(2) It possesses the legal authority to:

(i) Accept the transfer without payment of Secretary-owned property;

(ii) Convey residential property received from HUD to homesteaders without any substantial consideration, and

(iii) Assist in or undertake the financing of the rehabilitation for residential property conveyed to homesteaders.

(3) It has:

(i) A form for conditional conveyance as required by § 590.7(b)(2);

(ii) Equitable procedures for selecting homesteaders as required by § 590.7(b)(1); and

(iii) An urban homesteader agreement required by § 590.7(b)(3).

(4) It will convey the residential property received from HUD in fee simple title without consideration to the homesteader upon full compliance with the terms of the agreement required in § 590.7(b)(3).

(5) It has, prior to submission of its application:

(i) Provided citizens an adequate opportunity to express preferences about the proposed location of urban homesteading neighborhoods; and

(iii) Provided citizens with adequate information regarding the amount of rehabilitation loan funds, and the

number of any Secretary-owned properties and/or locally-owned properties to be homesteaded and the coordinated approach toward neighborhood improvement required by § 590.7(b)(6).

(6) It will submit any environmental information that may be requested by HUD in meeting the Department's environmental responsibilities under the National Environmental Policy Act of 1969.

(7) It will: (i) Not discriminate upon the basis of race, creed, color, handicap, sex, or national origin in the sale, lease, or rental or in the use or occupancy of the property conveyed in accordance with this Part;

(ii) Comply with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968; and

(iii) Comply with Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against the handicapped in any program or activity receiving Federal financial assistance.

(8) It will comply with the lead based paint procedures set forth in 24 CFR Part 35 agreeing to:

(i) Assure the elimination of the lead based paint hazards for which HUD will not expend funds in residential structures transferred under this Part; and

(ii) Make notification to potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed prior to 1950.

(9) It will submit any information that may be requested by HUD meeting the Department's Responsibilities under the National Historic Preservation Act of 1966 (Pub. L. 89-665) and the Preservation of Historic and Archaeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(10) It will, upon conveyance of title from HUD assume liability for injury and damage to persons or property by reason of a defect in the dwelling, its equipment, its appurtenances, or any other reason.

(11) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the urban homesteading program.

(12) It will maintain in writing and on file a description of its approved local urban homesteading program for the purposes of public information and review.

(c) OMB Circular A-95, Part II.

(1) The applicant shall submit the completed application to all appropriate State and areawide clearinghouses prior to, or concurrently with, the submission of the application to HUD.

(2) The clearinghouses shall have thirty (30) days to review the completed application and transmit to the applicant and to the appropriate HUD Area Office any comments or recommendations.

(3) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the impact of the proposal in revitalizing the designated urban homesteading neighborhood, the relationships of the proposal to community and areawide planning and any other considerations not reflected in the application which would bear on the viability of the proposal as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, Item 5, with emphasis on consistency among State, areawide, and local plans and compliance with environmental and civil rights laws.

(4) If the A-95 review comments contain any findings of inconsistency with State, areawide, or local plans or noncompliance with environmental or civil rights laws, the applicant must state how it proposes to resolve the finding or state its justification for proposing to proceed with the project despite the findings developed through the A-95 review process.

(5) HUD will not approve an application until all comments have been received and considered from the clearinghouses or until the end of the thirty-day review period, whichever occurs first.

(6) HUD shall notify the clearinghouses of actions taken on all applications reviewed within seven working days by use of Standard Form 424. when HUD makes approval following clearinghouse recommendations against approval or approval only with specific and major substantive changes, the clearinghouse will be provided an explanation for such approval with the HUD submittal of SF 424.

(d) *Application Submission.* Applications shall be submitted, at anytime, to the HUD Area Office which has jurisdiction over the applicant.

§ 590.13 HUD review and approval of application.

The appropriate HUD Area Office will review the application and will approve the proposed local urban homesteading program, unless the HUD Area Office determines that it does not comply with the requirements of this Part and other applicable laws and regulations. Approval of the application does not, however, obligate HUD to transfer a specific number of properties or particular properties identified in the application. If the application is disapproved, the applicant shall be informed in writing of the specific reasons for the disapproval.

§ 590.15 Urban homesteading agreement.

(a) Upon approval of the proposed local urban homesteading program, the appropriate HUD Area Office will sign an Urban Homesteading Agreement with the local urban homesteading agency. The regulations of this part become a part of the agreement.

(b) The agreement is renewable on an annual basis: *Provided*, That:

(1) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(2) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner including the selection of homesteaders, the conveyance of residential property to homesteaders, the implementation of its interim and permanent financing plan(s), the completion and quality of the housing rehabilitation and the implementation of its coordinated approach toward neighborhood improvements.

§ 590.17 Transfer of Secretary-owned property.

(a) *Property Disposition Assistance.* HUD's property disposition activity shall support the Urban Homesteading Program as follows:

(1) Upon the signing of the Urban Homesteading Agreement as required in § 590.15 but prior to the initial selection of any Secretary-owned property, a local urban homesteading agency may request HUD to suspend its routine property disposition activity for up to 45 days in the designated urban homesteading neighborhood(s). Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all Secretary-owned properties except those for which there are repair or sales contracts.

(2) The HUD Area Offices shall develop and implement a property disposition plan for Secretary-owned properties in the designated urban homesteading neighborhood which is consistent with the local urban homesteading program. This plan shall include the following procedure:

(i) As soon as feasible, but in any event not later than ten days, after receipt of notice of property transfer and application for insurance benefits to HUD for an unoccupied, one- to four-family residence in an approved urban homesteading neighborhood, the HUD Area Office shall notify the local urban homesteading agency of the potential availability of the property for homesteading. The notification shall be in writing and shall include the street address and zip code and shall inform the local urban

homesteading agency that it has thirty days from the date of the notice to inform the Area Office if it wishes to use the property for homesteading.

(ii) The Area Office shall not approve a property disposition program for that property until the local urban homesteading agency has informed that Area Office, in writing, whether or not it intends to use the property in the urban homesteading program or until 30 days have expired from the date of HUD's notice to such agency, whichever comes first. The Area Office Manager may extend the thirty (30) day deadline, if the Area Office Manager makes a determination that notification by the local urban homesteading agency within thirty (30) days is impractical. The title for any property requested in accordance with this procedure shall be transferred to a local urban home-steading agency if such property meets the conditions for transferring Secretary-owned properties listed in § 590.17(b).

(b) *Conditions for Transferring Secretary-Owned Properties.* Except as provided in § 590.17(c) below, HUD shall transfer the title of Secretary-owned properties to a local urban homesteading agency, without receiving payment from such agency, if the following conditions are met:

(1) The local urban homesteading program has been approved by HUD;

(2) The properties requested by the local urban homesteading agency are in a designated urban homesteading neighborhood(s);

(3) The HUD Area Office has reserved the necessary Section 810 funds to reimburse HUD's housing loan and mortgage insurance accounts for the residential property to be transferred;

(4) The requested property is unoccupied, unrepaired and a repair or sale contract has not been signed;

(5) The requested property is determined to be suitable for the approved local urban homesteading program by the Area Office. In making this determination the Area Office will take into account the following factors:

(i) The value of the property. The value of the property shall not exceed $15,000 for a one unit single family residence or an additional $5,000 for each unit of two- to four-family residences. To compute this value, HUD shall estimate and deduct from the appraised as is fair market value of the property the cost of continued care and handling for the average length of time for that area that such property might remain in HUD's inventory if it were not transferred to a local urban homesteading agency;

(ii) The estimated cost of housing repairs required. The cost of required repairs shall not exceed $27,000 per unit;

(iii) The Area Office Manager may authorize on a property by property or program by program basis the transfer of Secretary-owned property:

(A) Whose value exceeds the limitations, cited in paragraph (b)(5)(i) of this section, if the benefit to the community, expected from the expedited occupancy of the property and the reduction of difficulties and delays (such as vandalism to property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal Government;

(B) For which the value of housing repairs exceeds the limitation, cited in paragraph (b)(5)(ii) of this section, when the value of such repairs in excess of $27,000 per unit will be provided by the homesteader or through other local resources other than Section 312 rehabilitation loan funds.

(c) *Exceptions.* (1) If a local urban homesteading agency fails to accept title within thirty (30) days of the agency's selection of a Secretary-owned property made available in accordance with § 590.17(b)(1)-(5), the Area Office may approve an alternative disposition plan for the property. The Area Office Manager may extend, for a reasonable period of time, this thirty (30) day deadline if the Area Office Manager makes a determination that acceptance of title by the local urban homesteading agency within thirty (30) days of property selection is impractical.

(2) A property otherwise eligible for transfer to a local urban homesteading agency may be used to meet higher priority needs if the Area Office Manager makes a determination in writing that such property is essential to meet an existing legal obligation such as the following:

(i) Settlement of Sales Warranty claims;

(ii) Settlement of section 518 claims for critical structural defects in one- to four-family dwellings with certain mortgages insured by HUD;

(iii) Emergency housing needs: (disaster housing and urgent public housing needs);

(iv) Reconveyance for noncompliance with regulation 24 CFR Sec. 203.363;

(v) Reconveyance pursuant to Civil Frauds Act settlement; and

(vi) Reconveyance where the mortgage was never insured.

(3) A property otherwise eligible for transfer to a local urban homesteading agency for use in its HUD approved homesteading program, may instead be made available to private non-profit organization, a local development corporation or a neighborhood nonprofit organization as defined in Section 590.5(h) if the Area Office Manager determines in writing that such transfer will serve the community's best interest and is consistent with the goals of the local urban homesteading program. Such transfer does require concurrence of the local urban homesteading agency or the local government.

§ 590.19 Implementing Funds.

HUD will reserve or otherwise provide available Section 810 funds and Section 312 rehabilitation loan funds necessary to assist in implementing an approved local urban homesteading program. The Section 810 funds may not be used to reimburse local homesteading agencies for administrative costs nor may they be used to acquire property other than Secretary-owned property.

§ 590.21 Reduction of Funds.

The Secretary reserves the right to reduce any Section 810 Secretary-owned property acquisition allocation or Section 312 rehabilitation loan funds earmarked, reserved or targeted for a local urban homesteading agency should such agency not meet the schedules for use of such funds required in §§ 590.11(a)(4)(iii) and 590.11(a)(5)(ii) (A) and (C), and does not comply with the statutory and regulatory requirements of this part or fails to carry out its program as approved.

§ 590.23 Program Close Out [Reserved]

§ 590.25 Retention of Records.

Financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the urban homesteading program shall be retained by the local urban homesteading agency for a period of three years from the date of the program closeout.

§ 590.27 Audit.

The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of local urban homesteading agencies pertaining to funding assistance related to this part and Secretary-owned property transferred under this part for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

§ 590.29 Applicable Federal Laws and Regulations.

(a) *Nondiscrimination.* Every phase of an approved local urban homesteading program is to be implemented in accordance with the requirements of title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. Approved local urban homesteading programs shall also comply with Section 504 of the Rehabilitation

Act of 1973 which prohibits discrimination against the handicapped.

(b) *National Environmental Policy Act.* In implementing and administrating the Urban Homesteading Program, HUD shall comply with the National Environmental Policy Act of 1969 and all rules, regulations, and requirements issued pursuant thereto.

(c) *National Historic Preservation Act.* In implementing and administering the Urban Homesteading Program, HUD shall comply with the National Historic Preservation Act (Pub. L. 89-665), the Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291), including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(d) *Lead-Based Paint Poisoning Prevention Act.* Local urban homesteading agencies shall comply with the Department's Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint; elimination of immediate lead-based paint hazards in any residential structure transferred under this part; and notification of the hazards of lead-based paint poisoning to potential homesteaders in residential units constructed prior to 1950 and assisted under this part.

(e) *Acquisition and Relocation.* If a local urban homesteading agency acquires real property for an urban homesteading program approved under the regulations in this part, it shall comply with HUD relocation and acquisition regulations at 24 CFR Part 42.

§ 590.31 HUD Review of Local Urban Homesteading Agency's Performance.

(a) HUD will review each local urban homesteading agency's performance at least annually to determine whether:

(1) The program complied with the requirements of Title VIII, Section 810, of the 1974 Act, as amended, the implementing regulations, and other applicable laws and regulations;

(2) The local urban homesteading agency has carried out its program substantially as proposed and approved; and

(3) The local urban homesteading agency has a continuing capacity to carry out the approved program in a timely manner.

(b) In reviewing a local urban homesteading agency's performance, HUD will consider all available evidence which may include, but need not be limited to the following:

(1) Records maintained by the local urban homesteading agency;

(2) Results of HUD's monitoring of local urban homesteading agency's performance;

(3) Audit reports whether conducted by the local urban homesteading agency or by HUD auditors; and

(4) Records of comments and complaints by citizens and organizations, or litigation.

§ 590.33 Corrective and Remedial Action.

(a) When HUD determines on the basis of its review that there is a deficiency in the local urban homesteading agency's performance, the HUD Area office shall take one or more of the following corrective or remedial actions that are appropriate for the circumstances:

(1) Issue a letter of warning that advises the local urban homesteading agency of the deficiency and puts it on notice that more serious corrective and remedial actions will be taken if the deficiency is not corrected or is repeated;

(2) Advise the local urban homesteading agency to suspend, discontinue or not incur costs for the defective aspect(s) of the local program;

(3) Condition the renewal of the Urban Homesteading Agreement if there is substantial evidence of a lack of progress, noncompliance, or a lack of a continuing capacity. In such cases, the reasons for the conditional renewal and the actions necessary to remove the condition shall be specified; or

(4) Cancel the Urban Homesteading Agreement and explain the reasons for such action.

§ 590.35 Evaluation by HUD.

Local urban homesteading agencies shall supply data or make available such records as are necessary for the completion of HUD's annual evaluation of the Urban Homesteading Program.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 31, 1978.

ROBERT C. EMORY,
Assistant Secretary for Community Planning and Development.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-35905 Filed 12-28-78; 8:45 am]

federal register

FRIDAY, DECEMBER 29, 1978

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

■

LIST OF HEALTH MANPOWER SHORTAGE AREAS

Designated Under Section 332 of Public Health Service Act

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

HEALTH MANPOWER SHORTAGE AREAS DESIGNATED UNDER SECTION 332 OF THE PUBLIC HEALTH SERVICE ACT

List of Dental Manpower Shortage Areas

1. *Purpose.* This notice provides an updated list of those dental health manpower shortage areas designated by the Secretary of Health, Education, and Welfare through October 31, 1978, under the authority of section 332 of the Public Health Service Act.

2. *Background.* Section 332 of the Public Health Service Act, as amended by Pub. L. 94-484 (the Health Professions Educational Assistance Act of 1976), provides that the Secretary of Health, Education, and Welfare shall designate health manpower shortage areas in accordance with criteria established under section 332(b). Health manpower shortage areas are defined in section 332(a) to include (1) urban and rural geographic areas, (2) population groups, and (3) facilities with shortages of health manpower. Section 332(d) requires that the Secretary publish a list of the designated geographic areas, population groups, and facilities; and regulations implementing this authority (42 CFR Part 5) provide that periodic updates of the list be published. The Health Resources Administration's Bureau of Health Manpower has been assigned the responsibility for designating these areas.

This is the third list of health manpower shortage areas designated under section 332. The first list was published July 17, 1978, and included six different types of health manpower shortage areas (primary medical care, dental, vision care, podiatry, pharmacy, and veterinary manpower). The second list, published September 28, 1978, represented an update of designated primary medical manpower shortage areas only. The list below represents an update of designated dental manpower shortage areas only, and includes all such areas which had been designated by October 31, 1978.

Public or non-profit entities in (or with a demonstrated interest in) these areas are eligible to apply for assignment of National Health Service Corps personnel to provide health services in or to the areas. These areas are also eligible service areas for Public Health Service loan repayment and scholarship programs, and entities located in the areas are eligible to apply for (or receive preference for) certain grant programs under the Public Health Service Act.

3. *Development of list.* Criteria for the designation of health manpower shortage areas in accordance with section 332(b) were published by the Department of Health, Education, and Welfare as Interim-Final Regulations in the FEDERAL REGISTER of January 10, 1978 (43 FR 1586). Data available to the Bureau of Health Manpower on counties and small areas throughout the country were then compared with these criteria, and preliminary listings were developed of those areas which tentatively appeared to meet the criteria. These preliminary listings were submitted to the appropriate Health Systems Agencies (HSAs), State Health Planning and Development Agencies (SHPDAs) and Governors for their review and recommendations. In addition, the many requests received for designation of particular areas, population groups, or facilities were also submitted to the appropriate HSAs, SHPDAs, and Governors for review and recommendations.

Each request for designation was reviewed by the Bureau of Health Manpower together with any recommendations received concerning these designations, and a determination was made as to whether or not the areas involved met the shortage criteria. The results of these determinations were then provided by letter to the requesting agency or individual, with copies to other appropriate agencies and to interested organizations and persons. Where a review resulted in designation of one of more areas, this letter constituted the official notice of designation. The same procedure was applied in reviewing agencies' responses to the listings sent to them for review.

The list below represents, for dental health manpower, a compilation of those areas, population groups and facilities already formally designated by letter by the Bureau of Health Manpower between January 10 (the date of the publication of the Interim-Final Regulations in the FEDERAL REGISTER) and October 31, 1978.

4. *Format of list.* The list of areas is arranged by State. Within each State, the list is first presented by county. In those cases where a portion (or portions) of a county has been designated, the service area(s) involved are listed under the county name. Following the county listing, a list of these service areas is presented showing their component parts in terms of census tracts (C.T.), towns, townships, minor civil divisions (M.C.D.) or census county divisions (C.C.D.).

Where population groups or facilities have been designated, these are listed under the county name(s) in which the population resides or the facility is located.

Beside each designated area, the appropriate "degree of shortage" group is indicated, corresponding to the criteria for these groupings contained in the Interim-Final Regulations. (Group I represents areas with the highest degree of shortage, Group II with the next highest degree of shortage, etc.)

In addition to the specific listings shown here, all members of Indian tribes within the meaning of the definition in section 4(d) of Pub. L. 94-437, the Indian Health Care Improvement Act of 1976, are considered designated as population groups with a health manpower shortage.

5. *Supplemental list of NHSC-staffed sites previously designated under section 329(b).* Under section 407(c) of Pub. L. 94-484, areas which had been designated under section 329(b) of the Public Health Service Act as of September 30, 1977, and in which National Health Service Corps (NHSC) personnel were providing health services on that date, are automatically designated as health manpower shortage areas under section 332, until the end of the assignment period of those personnel. A supplementary list of dental areas in this category follows the list of dental manpower shortage areas designated using the new criteria.

The designation of any area listed on this supplemental list will lapse at the end of the current NHSC assignment period unless, prior to that time, it is determined that the area satisfies the new criteria and notification of redesignation under section 332 is made.

The format for this list of areas is also by State. Within each State, the name of the previously designated area is given, followed by the name of the clinic or other facility staffed, and the community and county in which the facility is located. Any facility for which the previous designation could not be identified was not included in this list.

6. *Future updates of list of designated areas.* The list below consists of those dental manpower shortage areas designated by October 31, 1978. Updates of the lists of other types of shortage areas will be published at a later date. Additions to and deletions from these lists are made continuously, by letter to affected agencies and persons; further updates of all the lists will be published periodically in the FEDERAL REGISTER. It should be noted that some additional dental manpower shortage areas may have been designated between October 31 and the date of this notice, and the appropriate agencies and persons notified of the designation. Although officially designated, these areas are not included in the list below.

Any designated area listed below is subject to withdrawal from designation if new information is presented to

and confirmed by the Bureau of Health Manpower indicating that the situation in the area has changed, or that erroneous or incomplete data were used in making the original designation.

For further information on these designations, to request additional designations, or to request withdrawal of any designation, please contact: Division of Manpower Analysis, Bureau of Health Manpower, Health Resources Administration, Attn: Shortage Area Designation Staff, Center Building, Room 4-41, 3700 East-West Highway, Hyattsville, Md. 20782.

All requsts for designation or withdrawal should be based on the criteria as published in the Interim-Final Regulations, which appeared in the FEDERAL REGISTER on January 10, 1978.

Dated: November 28, 1978.

HENRY A. FOLEY,
Administrator, Health Resources Administration.

HEALTH MANPOWER SHORTAGE AREAS—DENTAL CARE

ALABAMA

County Listing

County name	Degree of shortage group
Bullock	01
Chambers	02
Cherokee	02
Clay	01
Cleburne	01
Coosa	01
Crenshaw	01
Cullman	03
Dale	01
De Kalb	03
Franklin	04
Geneva	03
Hale	02
Jackson	04
Lamar	01
Lawrence	01
Lowndes	02
Marion	04
Pickens	04
Randolph	02
Talladega	03
Winston	03

ALASKA

Division Listing

Division name	Degree of shortage group
Aleutian Islands division	01
Angoon division	01
Barrow division	01
Bethel division	03
Bristol Bay Borough division:	
Service area: Bristol Bay	01
Bristol Bay division:	
Service area: Bristol Bay	01
Kobuk division	04
Kuskokwim division	01
Nome division	04
Outer Ketchikan division	01
Prince of Wales division	01
Skagway-Yakutat division	01
Southeast-Fairbanks division	01

ALASKA—Continued

Division Listing

Division name	Degree of shortage group
Upper Yukon division	01
Valdez-Chitina-Whitt. division	01
Wade Hampton division	01
Yukon-Koyukuk division	01

Service Area Listing

Service area name	Degree of shortage group
Bristol Bay	01
Bristol Bay Borough division	
Bristol Bay division	

ARIZONA

County Listing

County name	Degree of shortage group
Apache:	
Service area, Southeast/South Central Apache County	02
Gila	04
Greenlee	03
Maricopa:	
Service area, South Phoenix	02
Navajo:	
Service area, Hopi Indian Reservation	01
Pima:	
Service area, El Rio	01
Service area, Marana	02
Pinal	04
Santa Cruz	02

Service Area Listing

Service area name	Degree of shortage group
El Rio	01
County—Pima:	
Parts of county:	
C.T. 1	
C.T. 2	
C.T. 3	
C.T. 4	
C.T. 8	
C.T. 9	
C.T. 10	
C.T. 11	
C.T. 12	
C.T. 13.02	
C.T. 22	
C.T. 23	
C.T. 24	
C.T. 25.01	
C.T. 37.01	
C.T. 37.02	
C.T. 37.03	
C.T. 38	
C.T. 39	
Hopi Indian Reservation	01
County—Navajo:	
Parts of county:	
Hopi Division	
Marana	02
County—Pima:	
Parts of county:	
Marana CCD	
South Phoenix	02
County—Maricopa:	
Parts of county:	
C.T. 1152	
C.T. 1153	
C.T. 1154	
C.T. 1155	
C.T. 1156	

ARIZONA—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 1157	
C.T. 1158	
C.T. 1159	
C.T. 1160	
C.T. 1161	
C.T. 1162.01	
C.T. 1162.02	
C.T. 1163	
C.T. 1164	
C.T. 1165	
C.T. 1166	
C.T. 1167	
Southeast/South Central Apache County	02
County—Apache:	
Parts of county:	
St. Johns	
Round Valley	
Puerco	

ARKANSAS

County Listing

County name	Degree of shortage group
Ashley	04
Calhoun	01
Chicot	03
Cleveland	01
Dallas	04
Grant	03
Hempstead	04
Lafayette	01
Lawrence	04
Lincoln	02
Mississippi	04
Monroe	03
Nevada	03
Poinsett	02
Randolph	03

CALIFORNIA

County Listing

County name	Degree of shortage group
Fresno:	
Service area, Huron/Five Points	01
San Benito	04
San Francisco:	
Service area, Potrero Hill/South Bayshore	02
San Joaquin:	
Migrant and seasonal farmworkers	01
Santa Clara:	
Service area, Loma Prieta School District	01
Santa Cruz:	
Service area, Loma Prieta School District	01

Service Area Listing

Service area name	Degree of shortage group
Huron/Five Points	01
County—Fresno:	
Parts of county:	
C.T. 78	
Loma Preita School District	
County—Santa Clara:	
Parts of County:	
Lexington division (part)	
County—Santa Cruz:	
Parts of county:	
San Lorenzo Valley (part)	

CALIFORNIA—Continued

Service Area Listing

Service area name	Degree of shortage group
Scotts Valley division (part)	
Migrant and Seasonal farmworkers	01
County—San Joaquin	
Potrero Hill/South Bayshore	02
County—San Francisco:	
Parts of county:	
C.T. 180	
C.T. 226, 227	
C.T. 230-234	
C.T. 606-610	

COLORADO

County Listing

County name	Degree of Shortage group
Pueblo:	
Service area, Avondale	02

Service Area Listing

Service area name	Degree of shortage group
Avondale	02
County—Pueblo:	
Parts of county:	
C.T. 30.01	
C.T. 30.02	
C.T. 31.02	
C.T. 32	
C.T. 33	
C.T. 34	

CONNECTICUT

County Listing

County name	Degree of shortage group
Hartford:	
Service area, North/Northcentral Hartford	2

[84702]

Service Area Listing....

Service area name	Degree of shortage group
North/Northcentral Hartford	02
County—Hartford:	
Parts of County:	
C.T. 5008	
C.T. 5009	
C.T. 5010	
C.T. 5012	
C.T. 5013	
C.T. 5014	
C.T. 5015	
C.T. 5017	
C.T. 5018	
C.T. 5035	
C.T. 5037	

FLORIDA

County Listing

County name	Degree of shortage group
Citrus	04
Dixie	02
Gilchrist	01
Hamilton	01
Hernando	02
Lafayette	01
Lee	01
Putnam	04
Sumter	02
Suwannee	02

GEORGIA

County Listing

County name	Degree of shortage group
Atkinson	01
Banks	02
Ben Hill	04
Brantley	01
Brooks	02
Bryan	01
Butts	03
Calhoun	02
Camden	04
Candler	03
Chattooga	02
Clarke:	
Service area, Athens Neighborhood Health Center	01
Clinch	01
Coffee	03
Crisp	04
Dawson	01
Decatur	04
Dooly	02
Early	04
Emanuel	03
Fannin	04
Franklin	04
Glascock:	
Service area, Tri-county	01
Grady	04
Greene	04
Haralson	02
Hart	03
Heard	01
Irwin	03
Jefferson	03
Jenkins	01
Lamar	04
Lanier	04
Lee	01
Liberty	03
Lincoln	03
Long	01
Lumpkin	04
Madison	02
Meriwether	03
Miller	02
Mitchell	03
Murray	01
Oconee	01
Olgethorpe	01
Pickens	03
Pike	01
Screven	01
Seminole	01
Taliaferro:	
Service area, Tri-county	
Tattnall	04
Union	02
Warren:	
Service area, Tri-county	01
Worth	03
Athens Neighborhood Health Center	01
County—Clarke:	
Parts of county:	
C.T. 2	

GEORGIA—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 3	
C.T. 6	
C.T. 9	
Tri-County	01
County—Glascock	
County—Taliaferro	
County—Warren	

HAWAII

County Listing

County name	Degree of shortage group
Hawaii:	
Service area, Kau	01
Honolulu:	
Service area, Wainae Coast	04

Service Area Listing

Service area name	Degree of shortage group
Kau	01
County—Hawaii:	
Parts of county:	
C.T. 212	
Wainae Coast	04
County—Honolulu:	
Parts of county:	
C.T. 96.01	
C.T. 96.02	
C.T. 97	
C.T. 98	

IDAHO

County Listing

County name	Degree of shortage group
Idaho	03

ILLINOIS

County Listing

County name	Degree of shortage group
Alexander:	
Service area, Southern Illinois	02
Brown	04
Calhoun	01
Cook:	
Service area, Robbins	02
Service area, Uptown	04
Greene	04
Hancock	04
Hardin:	
Service area, Southern Illinois	02
Henderson	02
Jackson	04
Johnson:	
Service area, Southern Illinois	02
Kankakee:	
Service area, Pembroke	01
Macoupin	04
Massac:	
Service area, Southern Illinois	02
Pope:	
Service area, Southern Illinois	02

ILLINOIS—Continued

Service Area Listing

Service area name	Degree of shortage group
Pulaski:	
Service area, Southern Illinois	02
Scott	01
Will:	
Service area, Joliet Correctional Institution	01
Service area, Statesville Correctional Institution	01

Service Area Listing

Service area name	Degree of shortage group
Joliet Correctional Institution	01
County—Will:	
Parts of county:	
Joliet Correctional Institution	
Pembroke	01
County—Kankakee:	
Parts of county:	
Pembroke Township	
Robbins	02
County—Cook:	
Parts of county:	
Robbins Village	
Southern Illinois	02
County—Alexander	
County—Hardin	
County—Johnson	
County—Massac	
County—Pope	
County—Pulaski	
Statesville Correctional Institution	01
County—Will:	
Parts of county:	
Statesville Correctional Institution	
Uptown	04
County—Cook:	
Parts of county:	
C.T. 310	
C.T. 311	
C.T. 312	
C.T. 315	
C.T. 316	
C.T. 317	
C.T. 318	
C.T. 319	
C.T. 320	
C.T. 321	

INDIANA

County Listing

County name	Degree of shortage group
Crawford	03
Lagrange	04
Lake:	
Service area; Gary/area No. 1	01
Martin	03
Miami	03
Owen	02
Pike	04
Starke	04

Service Area Listing

Service area name	Degree of shortage group
Gary/area No. 1	01
County—Lake:	
Parts of county:	
C.T. 101	
C.T. 102	
C.T. 103	
C.T. 104	
C.T. 105	
C.T. 106	
C.T. 107	
C.T. 108	
C.T. 109	
C.T. 110	
C.T. 111	
C.T. 112	
C.T. 113	
C.T. 114	
C.T. 115	
C.T. 116	
C.T. 117	
C.T. 118	
C.T. 119	
C.T. 120	
C.T. 121	
C.T. 122	
C.T. 123	
C.T. 124	
C.T. 125	
C.T. 126	
C.T. 127	
C.T. 128	
C.T. 129	

INDIANA—Continued

Service Area Listing

Service area name	Degree of shortage group

IOWA

County Listing

County name	Degree of shortage group
Adair	03
Appanoose:	
Service area, Albia	04
Benton:	
Service area, Belle Plaine	03
Cedar:	
Service area, Clarence-Wheatland	03
Clarke:	
Service area: Osceola	02
Clayton:	
Service area, southern Clayton County	04
Clinton:	
Service area, Clarence-Wheatland	03
Crawford:	
Service area, Onawa-Mapleton	03
Decatur	02
Guthrie	03
Harrison:	
Service area, Logan	04
Iowa:	
Service area, Brooklyn-Montezuma	03
Jasper:	
Service area, Brooklyn-Montezuma	03
Jones:	
Service area, Clarence-Wheatland	03
Service area, State Correctional Institutions	01
Keokuk	04
Lee:	
Service area, State Correctional Institutions	01
Louisa	04
Lucas:	
Service area, Chariton	04
Madison:	
Service area, Osceola	02
Mahaska:	
Service area, Brooklyn-Montezuma	03
Marion:	
Service area, Albia	04
Monona:	
Service area, Logan	04
Service area, Onawa-Mapleton	03
Monroe:	
Service area, Albia	04
Service area, Chariton	04
Polk:	
Dentally indigent population	01
Pottawattamie:	
Service area, Logan	04

IOWA—Continued

County Listing

County name	Degree of shortage group
Poweshiek:	
Service area, Brooklyn-Montezuma	03
Scott:	
Service area, Clarence-Wheatland	03
Shelby:	
Service area, Logan	04
Tama:	
Service area, Belle Plaine	03
Taylor:	
Service area, Bedford	02
Union:	
Service area, Osceola	02
Van Buren	02
Wapello:	
Service area, Albia	04
Warren:	
Service area, Osceola	02
Service area, Chariton	04
Wayne	04
Woodbury:	
Service area, Onawa-Mapleton	03

Service Area Listing

Service area name	Degree of shortage group
Albia	04
County—Appanoose:	
Parts of county:	
Monrovia Town	
County—Marion:	
Parts of county:	
Hamilton Town	
County—Monroe:	
Parts of county:	
Albia City	
Lovilla Town	
County—Wapello:	
Parts of county:	
Blakesburg Town	
Bedford	02
County—Taylor:	
Parts of county:	
Bedford Town	
Gravity Town	
Conway Town	
New Market Town	
Sharpsburg Town	
Athelstan Town	
Blockton Town	
Clearfield Town	
Belle Plaine	03
County—Benton:	
Parts of county:	
Belle Plaine Town	
Luzerne Town	
Keystone Town	
County—Tama:	
Parts of county:	
Elberon Town	
Vining Town	
Chelsea Town	
Brooklyn-Montezuma	03
County—Iowa:	
Parts of county:	
Victor Town	
County—Jasper:	
Parts of county:	
Lynnville Town	
County—Mahaska:	
Parts of county:	
Barnes City Town	
County—Poweshiek:	
Parts of county:	
Brooklyn Town	
Guernsey Town	
Victor Town	
Hartwick Town	
Montezuma Town	
Searshoro Town	
Barnes City Town	
Deep River Town	

IOWA—Continued

Service Area Listing

Service area name	Degree of shortage group
Malcom Town	
Chariton	04
County—Lucas:	
Parts of county:	
Chariton Township	
Lucas Town	
Derby Town	
Russell Town	
Williamson Town	
County—Monroe:	
Parts of county:	
Melrose Town	
County—Warren:	
Parts of county:	
Lacona Town	
Clarence-Wheatland	03
County—Cedar:	
Parts of county:	
Clarence Town	
Lowden Town	
Stanwood Town	
County—Clinton:	
Parts of county:	
Lost Nation Town	
Calamus Town	
Wheatland Town	
Clarence-Wheatland	03
County—Clinton:	
Parts of county:	
Toronto Town	
County—Jones:	
Parts of county:	
Olin Town	
Wyoming Town	
Oxford Junction Town	
County—Scott:	
Parts of county:	
Dixon Town	
New Liberty Town	
Dentally indigent population	01
Logan	04
County—Harrison:	
Parts of county:	
Logan Town	
Magnolia Town	
Woodbine Town	
Missouri Valley Town	
Modale Town	
Persia Town	
Mondamin Town	
Pisgah Town	
Little Sioux Town	
County—Monona:	
Parts of county:	
Moorhead Town	
County—Pottawattamie:	
Parts of county:	
Neola Town	
Underwood Town	
County—Shelby:	
Parts of county:	
Portsmouth Town	
Panama Town	
Tennant Town	
Onawa-Mapleton	03
County—Crawford:	
Parts of county:	
Charter Oak Town	
Ricketts Town	
County—Monona:	
Parts of county:	
Whiting Town	
Turin Town	
Castana Town	
Mapleton Town	
Rodney Town	
Onawa Town	
Ute Town	
Soldier Town	
County—Woodbury:	
Parts of county:	
Anthon Town	
Oto Town	
Hornick Town	
Smithland Town	
Danbury Town	

IOWA—Continued

Service Area Listing

Service area name	Degree of shortage group
Osceola	02
County—Clarke	
County—Madison:	
Parts of county:	
Truro Town	
County—Union:	
Parts of county:	
Afton	
Arispe	
Lorimar	
Thayer	
County—Warren:	
Parts of county:	
New Virginia Town	
Southern Clayton County	04
County—Clayton:	
Parts of county:	
Guttenberg City	
Garber Town	
Southern Clayton County	04
County—Clayton:	
Parts of county:	
Elkport Town	
North Buena Vista Town	
Elkader Town	
Saint Olaf Town	
Garnavillo Township	
Little Port Town	
Volga City Town	
Edgewood Town	
Strawberry Point Town	
State Correctional Institutions	01
County—Jones:	
Parts of county:	
Men's reformatory (Anamosa)	
County—Lee:	
Parts of county:	
State penitentiary (Ft. Madison)	

KANSAS

County Listing

County name	Degree of shortage group
Chase	01
Chautauqua	03
Cherokee	03
Coffey	02
Comanche	01
Elk	04
Graham	02
Gray	04
Greeley	01
Jefferson	04
Jewell	01
Lane	01
Linn	02
Meade	04
Morton	01
Smith	03
Stanton	01
Wabaunsee	02
Wallace	01
Woodson	03

KENTUCKY

County Listing

County name	Degree of shortage group
Ballard	04
Bath	04
Bell:	
Service area, Western Harlan	01
Service area, Williamsburg	01
Bracken	02

KENTUCKY—Continued

County Listing

County name	Degree of shortage group
Breathitt	04
Butler	03
Carlisle	01
Carter	02
Casey	02
Clay	01
Edmonson	01
Elliott	01
Estill	02
Gallatin	01
Grant	03
Hancock	03
Harlan:	
Service area, Western Harlan	01
Service area, Cumberland	01
Jackson	01
Johnson	04
Knott	02
Knox:	
Service area, Williamsburg	02
Larue	04
Laurel	02
Leslie	01
Lewis	01
Lincoln	01
Livingston	03
Logan	04
Lyon:	
Service area, Kentucky State Reformatory	01
McCreary	04
Magoffin	01
Martin	01
Menifee	01
Morgan	03
Ohio	03
Pendleton	04
Perry	02
Pike	04
Spencer	04
Todd	03
Trimble	04
Webster	03
Wolfe	03

Service Area Listing

Service area name	Degree of shortage group
Cumberland	01
County—Harlan:	
Parts of county:	
Upper Clover CCD	
Poor Fork CCD	
Wallins Creek CCD	
Alva CCD	
Kentucky State Reformatory	01
County—Lyon:	
Parts of county:	
Kentucky State Reformatory	
Western Harlan	01
County—Bell:	
Parts of county:	
Tejay CCD	
County—Harlan:	
Parts of county:	
Benham-Lynch Division	
Cumberland CCD	
Williamsburg	01
County—Bell:	
Parts of county:	
Pruden Fonde CCD	
County—Knox:	
Parts of county:	
Barbourville West CCD	
Barbourville CCD	
Barbourville East CCD	
Bryants CCD	
Dewitt CCD	
Girdler CCD	
Gray CCD	
Trosper CCD	

LOUISIANA

County Listing

County name	Degree of shortage group
Orleans:	
Service area, Irish Channel	01

Service Area Listing

County name	Degree of shortage group
Irish Channel	01
County—Orleans:	
Parts of County:	
C.T. 77	
C.T. 78	
C.T. 81	
C.T. 83	
C.T. 87	
C.T. 88	
C.T. 89	

MAINE

County Listing

County name	Degree of shortage group
Aroostook:	
Service area, Madawaska	01
Penobscot:	
Service area, Dexter-Hartland	03
Service area, Northern Penobscot-Piscataquis	02
Piscataquis:	
Service area, Dexter-Hartland	03
Somerset:	
Service area, Dexter-Hartland	03

Service Area Listing

Service area name	Degree of shortage group
Dexter-Hartland	03
County—Penobscot:	
Parts of county:	
Charleston Town	
Corrinna Town	
Corinth Town (E. & S.)	
Dexter Town	
Exeter Town	
Garland Town	
Newport Town	
Stetson Town	
Plymouth Town	
County—Piscataquis:	
Parts of county:	
Abbot Town	
Atkinson Town	
Dover-Foxcroft Town	
Guilford Town	
Parkman Town	
Sangerville Town	
Wellington Town	
County—Somerset:	
Parts of county:	
Cornville Town	
Cambridge Town	
Detroit Town	
Harmony Town	
Hartland Town	
Palmyra Town	
Ripley Town	
St. Albans Town	
Brighton Plant.	
Athens Town	
Canaan Township	

MAINE—Continued

Service Area Listing

Service area name	Degree of shortage group
Madawaska	01
County—Aroostook:	
Parts of county:	
Grand Isle	
Madawaska	
St. Agatha	
Northern Penobscot-Piscataquis	02
County—Penobscot:	
Parts of county:	
Bradford Town	
Burlington Town	
Chester Town	
East Millinocket Town	
Enfield Town	
Howland Town	
La Grange Town	
Lee Town	
Lincoln Town	
Lowell Town	
Mattawamkeag Town	
Medway Town	
Millinocket Town	
Passadumkeag Town	
Springfield Town	
Winn Town	
Unorganized Territory of Kingman	
County—Piscataqois	
Parts of County	
Brownville Town	
Greenville Town	
Milo Town	
Sebec Town	
Shirley Town	
Medford Town	
Bowerbank Town	
Willimantic Town	
Elliottsville Plantation	
Barnard Plantation	
Blanchard Plantation	
Kinbsburn Plantation	
Lake View Plantation	
Unorg. Territory of N. Piscataquis	
Unorg. Territory of S.E. Piscataquis	

MARYLAND

County Listing

County name	Degree of shortage group
Somerset County:	
Service area, Somerset	02
Baltimore City:	
Service area, Constant Care	02
Service area, East Baltimore	01
Service area, West Baltimore	02
Service area, Hampden/Woodberry/Remington	04

Service Area Listing

Service area name	Degree of shortage group
Constant Care	02
Parts of Baltimore City:	
C.T. 402	
C.T. 1401	
C.T. 1402	
C.T. 1403	
C.T. 1501	
C.T. 1502	
C.T. 1601	
C.T. 1602	
C.T. 1603	
C.T. 1604	
C.T. 1701	
C.T. 1702	
C.T. 1703	
C.T. 2101	
East Baltimore	01

MARYLAND—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts of Baltimore City:	
C.T. 501	
C.T. 603	
C.T. 604	
C.T. 605	
C.T. 704	
C.T. 806	
C.T. 807	
C.T. 808	
C.T. 909	
C.T. 1001	
C.T. 1002	
C.T. 1004	
Hampden/Woodberry/Remington	04
Parts of Baltimore City:	
C.T. 1203	
C.T. 1206	
C.T. 1207	
C.T. 1305	
C.T. 1306	
C.T. 1308.02	
Somerset County	02
County—Somerset County:	
Parts of county:	
C.T.0010	
C.T.0030	
C.T.0040	
C.T.0060	
C.T.0080	
C.T.0130	
C.T.0150	
West Baltimore	02
Parts of Baltimore City:	
C.T. 1801	
C.T. 1802	
C.T. 1803	
C.T. 1901	
C.T. 1902	
C.T. 1903	
C.T. 2001	
C.T. 2002	
C.T. 2003	
C.T. 2004	
C.T. 2005	

MASSACHUSETTS

County Listing

County name	Degree of shortage group
Hampden:	
Service area, Worthington	01
Hampshire:	
Service area; Worthington	01
Suffolk:	
Service area, Allston	01

Service Area Listing

Service area name	Degree of shortage group
Allston	01
County—Suffolk:	
Parts of county:	
C.T. 1	
C.T. 7	
C.T. 8	
Worthington	01
County—Hampden:	
Parts of county:	
Chester Town	
County—Hampshire:	
Parts of county:	
Chesterfield Town	
Cummington Town	
Goshen Town	
Huntington Town	
Plainfield Town	
Worthington Town	

MICHIGAN

County Listing

County name	Degree of shortage group
Arenac:	
Service area, Rifle River	02
Baraga:	
Service area, Iron	04
Houghton:	
Service area, Iron	04
Iosco:	
Service area, Rifle River	02
Iron:	
Service area, Iron	04
Lapeer:	
Service area, Sandusky	04
Marquette:	
Service area, Iron	04
Ogemaw:	
Service area, Rifle River	02
Ontonagon:	
Service area, Iron	04
Roscommon:	
Service area, Houghton Lake—St. Helen.	04
Sanilac:	
Service area, Sandusky	04
Wayne:	
Service area, Beryl Spruce Center	03
Service area, Mom & Tots Family Center	02
Service area, Sumter Health Center	04
Service area, Wayne Co. Dept. of Health Clinic	04
Service area, Wayne County Jail	02
Service area, Detroit/Wayne	02

Service Area Listing

Service area name	Degree of shortage group
Beryl Spruce Center	03
County—Wayne:	
Parts of county:	
C.T. 751	
C.T. 752	
C.T. 753	
C.T. 754	
C.T. 779	
C.T. 780	
C.T. 781	
C.T. 782	
C.T. 783	
C.T. 784	
C.T. 785	
C.T. 786	
C.T. 787	
C.T. 788	
Detroit/Wayne	02
County—Wayne:	
Parts of county:	
C.T. 153	
C.T. 154	
C.T. 155	
C.T. 175	
C.T. 176.01	
C.T. 176.04	
C.T. 177	
C.T. 178	
C.T. 179	
C.T. 180	
C.T. 181	
C.T. 182	
C.T. 183	
C.T. 184	
C.T. 185	
C.T. 188	
Houghton Lake—St. Helen	04
County—Roscommon:	
Parts of county:	
Denton township	
Roscommon township	
Richfield township	
Au Sable township	
Nester township	

MICHIGAN—Continued

Service Area Listing

Service area name	Degree of shortage group
Backus township	
Higgins township	
Iron County area	04
County—Baraga:	
Parts of county:	
Covington township	
Spurr township	
County—Forest—Wisconsin:	
Parts of county:	
Alvin township	
Pople River township	
County—Houghton:	
Parts of county:	
Ducan township	
County—Iron	
County—Marquette:	
Parts of county:	
Republic township	
County—Vilas—Wisconsin:	
Parts of county:	
Philps township	
Connover township	
County—Ontonagon:	
Parts of county:	
Interior township	
Mom & Tots Family Center	02
County—Wayne:	
Parts of county:	
C.T. 755	
C.T. 756	
C.T. 757	
C.T. 765	
C.T. 766	
C.T. 767	
C.T. 768	
C.T. 769	
C.T. 770	
C.T. 771	
C.T. 772	
C.T. 773	
C.T. 774	
C.T. 775	
C.T. 776	
C.T. 777	
C.T. 778	
C.T. 779	
C.T. 789	
C.T. 790	
C.T. 791	
C.T. 792	
C.T. 797	
Rifle River	02
County—Arenac:	
Parts of county;	
Moffet township	
Clayton township	
Mason township	
County—Iosco:	
Parts of county:	
Plainfield township	
Reno township	
Burleigh township	
County—Ogemau:	
Parts of county:	
Horton township	
Mills township	
Richland township	
Churchhill township	
Logan township	
Sandusky	04
County—Lapeer:	
Parts of county:	
Burnside township	
County—Sanilac	
Sumter Health Center	04
County—Wayne:	
Parts of county:	
C.T. 937	
C.T. 938.01	
C.T. 938.02	
C.T. 939	
C.T. 940	
C.T. 941	
C.T. 942.01	
Wayne County, Department of Health Clinic	04

MICHIGAN—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Wayne:	
Parts of county:	
C.T. 841	
C.T. 842	
C.T. 843	
C.T. 844	
C.T. 918.01	
C.T. 918.02	
C.T. 919	
C.T. 942.02	
C.T. 943	
Wayne County Jail	02
County—Wayne:	
Parts of county:	
Wayne County Jail	

MINNESOTA

County Listing

County name	Degree of Shortage group
Hennepin:	
American Indian population in Minneapolis	01

Service area Listing

Service area name	Degree of Shortage group
American Indian population in Minneapolis	01
County—Hennepin:	
Parts of county:	
American Indian population in Minneapolis	

MISSOURI

County Listing

County name	Degree of Shortage group
Bates	04
Bollinger	01
Carter	01
Cedar:	
Service area, Humansville	02
Chariton	04
Christian	02
Clark	03
Dallas	01
Daviess	03
De Kalb	04
Douglas	03
Dunklin	02
Hickory:	
Service area, Humansville	02
Service area, Hickory	01
Holt	02
Jackson:	
Service area, Central Kansas city	02
Knox	03
Lewis	02
Lincoln	03
Linn	04
McDonald	04
Maries	02
Mississippi	02
Oregon	01
Ozark	01
Pemiscot	03
Polk:	
Service area, Humansville	02
Pulaski	02
Putnam	04
Ralls	01
Reynolds	01
Ripley	02

MISSOURI—Continued

County Listing

County name	Degree of Shortage group
St. Clair:	
Service area, Humansville	02
Service area, St. Clair	02
Schuyler	01
Scotland	04
Shannon	01
Stoddard	03
Stone	03
Sullivan	03
Texas	03
Washington	01
Wright	03

Service Area Listing

Service area name	Degree of Shortage group
Central Kansas City	
County—Jackson:	02
Parts of county:	
C.T. 4-10	
C.T. 15-26	
C.T. 32, 33, 34	
C.T. 35.01, 35.02	
C.T. 36.01, 36.02	
C.T. 37-42	
C.T. 52-55	
C.T. 56.01, 56.02	
C.T. 57	
C.T. 58.01, 58.02	
C.T. 59.01	
C.T. 60-64	
C.T. 75, 76, 77	
C.T. 78.01, 78.02	
C.T. 79.80	
Hickory	01
County—Hickory:	
Parts of county:	
Center Township	
Cross Timbers Township	
Green Township	
Jordan Township	
Montgomery Township	
Stark Township	
Wheatland Township	
Humansville	02
County—Cedar:	
Jefferson Township	
Washington Township	
County—Hickory:	
Parts of county:	
Tyler Township	
Weaubleau Township	
County—Polk:	
Parts of county:	
Campbell Township	
Cliquot Township	
Flemington Township	
Parts of county:	
Jefferson Township	
Johnson Township	
County—St. Clair:	
Parts of county:	
Collins Township	
Washington Township	
St. Clair	02
County—St. Clair:	
Parts of county:	
Appleton Township	
Butler Township	
Center Township	
Chalk Level Township	
Dallas Township	
Doyal Township	
Jackson Township	
Monegaw Township	
Osage Township	
Oseola Township	
Polk Township	
Roscoe Township	
Speedwell Township	
Taber Township	

MONTANA

County Listing

County name	Degree of shortage group
Jefferson	03
Madison	04
Phillips	04
Rosebud:	
Service area, Rosebud	04
Treasure:	
Service area, Rosebud	04

Service Area Listing

Service area name	Degree of shortage group
Rosebud	04
County—Rosebud	
County—Treasure	

NEBRASKA

County Listing

County name	Degree of shortage group
Arthur:	
Service area, Mullen	01
Cherry:	
Service area, Mullen	01
Douglas:	
Service area, Southeast Omaha	01
Service area, Northeast Omaha	04
Grant:	
Service area, Mullen	01
Hooker:	
Service area, Mullen	01
Logan:	
Service area, Mullen	01
McPherson:	
Service area, Mullen	01
Thomas:	
Service area, Mullen	01

Service Area Listing

Service area name	Degree of shortage group
Mullen	01
County—Arthur	
County—Cherry:	
Parts of county:	
Calf Creek Precinct	
Elsmere Precinct	
Gillaspie Precinct	
Kennedy Precinct	
Lackey Precinct	
Loup Precinct	
Mother Lake Precinct	
Pleasant Hill Precinct	
Wells Precinct	
County—Grant	
County—Hooker	
County—Logan:	
Parts of county:	
Burt Precinct	
Cody Lake Precinct	
Lone Valley Precinct	
County—McPherson:	
Parts of county:	
Hall Precinct	

NEBRASKA—Continued

Service Area Listing

Service area name	Degree of shortage group
Whitewater Precinct	
Worden Precinct	
County—Thomas	
Northeast Omaha	04
County—Douglas:	
Parts of county:	
C.T. 6	
C.T. 7	
C.T. 9	
C.T. 10	
C.T. 11	
C.T. 12	
C.T. 13.01	
C.T. 13.02	
C.T. 14	
C.T. 15	
C.T. 52	
C.T. 60	
Southeast Omaha	01
County—Douglas:	
Parts of County:	
C.T. 29	

NEVADA

County Listing

County name	Degree of shortage group
Clark:	
Service area, Northeast Clark	01
Service area, South/Southwest Clark	01
Service area, Western Clark	01
Esmeralda	01
Eureka	01
Lander	01
Lyon	03
Mineral	02
Nye	01
Storey	01
White Pine	04

Service Area Listing

Service area name	Degree of shortage group
Northeast Clark	01
County-Clark:	
Parts of county:	
C.T. 56	
C.T. 59 (East)	
South/Southwest Clark	01
County:—Clark:	
Parts of county:	
C.T. 57	
C.T. 58 (South)	
Western Clark	01
County—Clark:	
Parts of county:	
C.T. 58 (Central/Northern)	
C.T. 59 (West)	

NEW JERSEY

County Listing

County name	Degree of shortage group
Mercer:	
Dentally indigent population of Henry Austin Service Area	03

NEW JERSEY—Continued

Service Area Listing

Service area name	Degree of shortage group
Henry Austin Service Area	03
County—Mercer:	
Parts of county:	
C.T. 001	
C.T. 009	
C.T. 010	
C.T. 015	
C.T. 016	
C.T. 017	
C.T. 019	
C.T. 020	
C.T. 008 (Portion)	
C.T. 011 (Portion)	
C.T. 014 (Portion)	
C.T. 018 (Portion)	
C.T. 021 (Portion)	
C.T. 022 (Portion)	

NEW MEXICO

County Listing

County name	Degree of shortage group
Bernalillo:	
Service area, Los Padillos—Pajaritto	01
Lincoln:	
Service area, Northern Lincoln County	01

Service Area Listing

Service area name	Degree of shortage group
Los Padillas-Pajaritto	01
County—Bernalillo:	
Parts of county:	
C.T. 46	
Northern Lincoln County	01
County—Lincoln:	
Parts of county:	
Carrizozo	
Capitan	
Corona	

NEW YORK

County Listing

County name	Degree of shortage group
Bronx:	
Service area, South Central Bronx-Fort Apache	04
Cattaraugus:	
Service area, Northwest Cattaragus	01
Kings:	
Service area, Gowanus/Park Slope	02
New York:	
Service area, East Harlem	03
Westchester:	
Dentally Indigent Population of Mt. Vernon Service Area	04

Service Area Listing

Service area name	Degree of shortage group
Mt. Vernon	04
County—Westchester:	
Parts of county:	
C.T. 25 (Dentally indigent)	
C.T. 27 (Dentally indigent)	
C.T. 28 (Dentally indigent)	
C.T. 29 (Dentally indigent)	
C.T. 31 (Dentally indigent)	

NEW YORK—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 32 (Dentally indigent)	
C.T. 35 (Dentally indigent)	
East Harlem	03
County—New York:	
Parts of county:	
C.T. 178	
C.T. 180	
C.T. 182	
C.T. 184	
C.T. 188	
C.T. 192	
C.T. 194	
C.T. 196	
C.T. 198	
Gowanus/Park Slope	02
County—Kings:	
Parts of county:	
C.T. 71	
C.T. 127	
C.T. 131	
C.T. 133	
Northwest Cattaragus	01
County—Cattaraugus:	
Parts of county:	
Dayton	
Persia	
Otto	
East Otto	
Mansfield	
Leon	
New Albion	
Conewango	
Napoli	
Little Valley	
South Central Bronx-Fort Apache	04
County—Bronx:	
Parts of county:	
C.T. 121.01, 121.02	
C.T. 123, 125	
C.T. 127.01	
C.T. 131	
C.T. 151,157	
C.T. 161	

NORTH CAROLINA

County Listing

County name	Degree of shortage group
Alexander	03
Anson	01
Bladen	02
Brunswick	01
Caldwell	04
Columbus	03
Cumberland	04
Lincoln	03
McDowell	04
Macon	04
Mitchell:	
Service area, Northern Mitchell County	01
Montgomery	04
Pender	02
Richmond	04
Robeson	04
Sampson	02
Scotland	03
Union	02
Wilkes	03

Service Area Listing

Service area name	Degree of shortage group
Northern Mitchell County	01
County—Mitchell:	
Parts of County:	
Bakersville	
Cane Creek	
Little Rock Creek	
Fork Mountain	
Red Hill	

NORTH CAROLINA—Continued

Service Area Listing

Service area name	Degree of shortage group
Harrell	
Bradshaw	
Poplar	
Snow Creek	

NORTH DAKOTA

County Listing

County name	Degree of shortage group
Benson	03
Billings	01
Dunn	01
Eddy	04
Emmons	04
Kidder	03
McHenry	03
McKenzie	04
Mercer	03
Pierce:	
Service area, Harvey	04
Sheridan:	
Service area, Harvey	04
Sioux	01
Ward:	
Service area, Kenmare	01
Wells:	
Service area, Harvey	04

Service Area Listing

Service area name	Degree of shortage group
Harvey	04
County—Pierce:	
Parts of county:	
South Pierce Division	
County—Sheridan:	
Parts of county:	
Sheridan	
County—Wells:	
Parts of county	
Wells	
Kenmare	01
County—Ward:	
Parts of county:	
Des Lacs Valley Division	
Kenmare Division	

OHIO

County Listing

County name	Degree of shortage group
Adams	01
Brown	03
Cuyahoga:	
Service area, Glenville (Area I—Cleveland)	02
Hamilton:	
Service area; Winston Hills (Cincinnati)	02
Harison	02
Meigs	03
Monroe	03
Montgomery:	
Service area, Area I—Dayton	04
Service area, Area II—Dayton	01
Service area, Area III—Dayton	02
Morgan	02
Noble	04
Paulding	04
Perry	03
Ross:	
Dentally indigent population	04
Vinton	01

OHIO—Continued

Service Area Listing

Service area name	Degree of shortage group
Area I—Dayton	04
County—Montgomery:	
Parts of county:	
C.T. 1	
C.T. 2	
C.T. 3	
C.T. 4	
C.T. 5	
C.T. 16	
C.T. 17	
C.T. 18	
C.T. 30	
C.T. 31	
Area II—Dayton	01
County—Montgomery:	
Parts of county:	
C.T. 19	
C.T. 22	
C.T. 23	
C.T. 25	
C.T. 26	
C.T. 27	
C.T. 28	
C.T. 29	
C.T. 32	
C.T. 33	
C.T. 34	
Area III—Dayton	02
County—Montgomery:	
Parts of county:	
C.T. 6	
C.T. 7	
C.T. 12	
C.T. 13	
C.T. 14	
C.T. 15	
C.T. 20	
C.T. 21	
Dentally indigent (Ross County)	04
County—Ross	
Glenville (Area I—Cleveland)	02
County—Cuyahoga:	
Parts of county:	
C.T. 1114	
C.T. 1116-1168	
C.T. 1181-1185	
Winston Hills (Cincinnati)	02
County—Hamilton:	
Parts of county:	
C.T. 73 (Winston Hills/Place)	
C.T. 80 (Winston Hills/Place)	
C.T. 257 (Elmwood Place)	

OKLAHOMA

County Listing

County name	Degree of shortage group
Adair	01
Beaver	03
Choctaw	04
Coal	02
Cotton	04
Delaware	03
Dewey	01
Haskell	01
Hughes	04
Johnston	02
Kiowa	02
Latimer	03
Le Flore	03
McCurtain	04
Major	01
Okfuskee	01
Pushmataha	01
Roger Mills	01
Seminole	04

OREGON

County Listing

County name	Degree of shortage group
Curry:	
Service area, Northwest Curry	02
Deschutes:	
Service area, La Pine	02
Gilliam:	
Service area, Tri-County	04
Josephine:	
Service area, Cave Junction	04
Klamath:	
Service area, La Pine	02
Lake:	
Service area, La Pine	02
Marion:	
Migrant population	01
Morrow:	
Service area, Tri-County	04
Multnomah:	
Service area, North/Northeast Portland	04
Polk:	
Migrant population	01
Wheeler:	
Service area, Tri-County	04
Yamhill:	
Migrant population	01

Service Area Listing

Service area name	Degree of shortage group
Cave Junction	04
County—Josephine:	
Parts of county:	
Cave Junction	
La Pine	02
County—Deschutes:	
Parts of county:	
Sisters Mulligan CCD South of Sunriver	
County—Klamath:	
Parts of county:	
Crescent Lake CCD	
Chiloquin CCD	
County—Lake:	
Parts of county:	
Silver Lake-Ft. Rock CCD	
Migrant Population	01
County—Marion	
County—Polk	
County—Yamhill	
Northwest Curry	02
County—Curry:	
Parts of county:	
Port Orford CCD	
Gold Beach CCD	
Agness CCD	
North/Northeast Portland	04
County—Multnomah:	
Parts of county:	
C.T. 33.01	
C.T. 33.02	
C.T. 34.01	
C.T. 34.02	
C.T. 35.01	
C.T. 35.02	
C.T. 36.01	
C.T. 36.02	
C.T. 37.01	
C.T. 37.02	
C.T. 38.01	
C.T. 38.02	
C.T. 38.03	
C.T. 39.01	
C.T. 39.02	
C.T. 40.01	
C.T. 40.02	
Tri-County	04
County—Gilliam	
County—Morrow	
County—Wheeler	

PENNSYLVANIA

County Listing

County name	Degree of shortage group
Adams:	
Service area, North Adams	02
Allegheny:	
Service area, Homerwood-Brushton	01
Armstrong:	
Service area, Armstrong-Clarion	03
Service area, Kiski Valley	03
Bedford:	
Service area, Hyndman	01
Carbon:	
Service area, Jim Thorpe	01
Clarion:	
Service area, Armstrong-Clarion	03
Service area, Forest	02
Crawford:	
Service area, East Crawford County	01
Dauphin:	
Service area, Tri-Town service area	04
Delaware:	
Service area, City of Chester	02
Fayette:	
Service area, Greensboro	02
Forest:	02
Service area, Forest	
Franklin:	
Service area, Valleys Community	01
Fulton	01
Greene:	
Service area, Greensboro	02
Service area, West Greene	01
Huntingdon	01
Indiana:	
Service area, Indiana—N Portion	02
Lancaster:	
Service area, Welsh Mountain	02
Perry	01
Philadelphia:	
Service area, North Philadelphia	01
Schuylkill:	
Service area, Tri-Town service area	04
Somerset:	
Service area, Hyndman	01
Sullivan	01
Venango:	
Service area, Forest	02
Warren:	
Service area, Forest	02
Westmoreland:	
Service area, Kiski Valley	03
Wyoming:	
Service area, Southern Wyoming County	01
Service area, York City	04

Service Area Listing

Service area name	Degree of shortage group
Armstrong—Clarion	03
County—Armstrong:	
Parts of county:	
Brady's Bend Township	
Madison Township	
Perry Township	
Pine Township	
Sugarcreek Township	
Washington Township	
County—Clarion:	
Parts of county:	
Brady Township	
East Brady Township	
Madison Township	
City of Chester	02
County—Delaware:	
Parts of county:	
C.T. 4048	
C.T. 4049.01	
C.T. 4049.02	
C.T. 4050	
C.T. 4051	
C.T. 4052	
C.T. 4053	

PENNSYLVANIA—Continued

Service area name	Degree of shortage group
C.T. 4054	
C.T. 4055	
C.T. 4056	
C.T. 4057	
C.T. 4058.01	
C.T. 4058.02	
C.T. 4059	
C.T. 4060	
East Crawford County	01
County—Crawford:	
Parts of county:	
Athens Township	
Bloomfield Township	
Centerville Township	
Richmond Township	
Rockdale Township	
Rome Township	
Sparta Township	
Spartanburg Township	
Steuben Township	
Townville Borough	
Forest	02
County—Clarion	
Parts of county:	
Washington Township	
Farmington Township	
County—Forest	
County—Venango	
Parts of county:	
Pleasantville Township	
Allegheny Township	
President Township	
County—Warren	
Parts of county:	
Triumph Township	
Limestone Township	
Watson Township	
Deerfield Township	
Cherry Grove Township	
South West Township	
Greensboro	02
County—Fayette:	
Parts of county:	
Point Marion Borough	
German Township	
Nicholson Township	
Springhill Township	
County—Greene:	
Parts of county:	
Dunkard Township	
Greene Township	
Monongahela Township	
Greensboro Borough	
Homerwood-Brushton	01
County—Allegheny:	
Parts of county:	
C.T. 1207	
CT. 1301	
C.T. 1302	
C.T. 1303	
C.T. 1304	
C.T. 1305	
Hyndman	01
County—Bedford:	
Parts of county:	
Harrison Township	
Hyndman Borough	
Juniata Township	
Londonderry Township	
County—Somerset:	
Parts of county:	
Allegheny Township	
Fairhope Township	
Indiana—N Portion	02
County—Indiana:	
Parts of county:	
West Mahoning Township	
North Mahoning Township	
South Mahoning Township	
East Mahoning Township	
Canoe Township	
Banks Township	
Grant Township	
Montgomery Township	
Washington Township	
Rayne Township	
Green Township	
Pine Township	
Glen Campbell Borough	
Smicksburg Borough	
Cherry Tree Borough	

PENNSYLVANIA—Continued

Service area name	Degree of shortage group
Marion Center Borough	
Plumville Borough	
Creekside Borough	
Clymer	
Jim Thorpe	01
County—Carbon:	
Parts of county:	
Kidder Township	
Penn Forest Township	
Jim Thorpe Borough	
East Side Borough	
Lausanne Township	
Lehigh Township	
Kiski Valley	03
County—Armstrong:	
Parts of county:	
Apollo Borough	
Bethel Township	
Burrel Township	
Gilpin Township	
Kiskiminitas Township	
Leechburg Borough	
North Apollo Borough	
Parks Township	
South Bend Township	
County—Westmoreland:	
Parts of county:	
Oklahoma Borough	
Allegheny Township	
Avonmore Borough	
Bell Township	
East Vandergrift Borough	
Hyde Park Borough	
Vandergrift Borough	
Washington Township	
West Leechburg Borough	
North Adams	02
County—Adams:	
Parts of county:	
Menallen Township	
Tyrone Township	
Huntington Township	
Butler Township	
Arendtsville Borough	
Bendersville Borough	
Biglerville Borough	
York Springs Borough	
North Philadelphia	01
County—Philadelphia:	
Parts of county:	
C.T. 137	
C.T. 138	
C.T. 139	
C.T. 140	
C.T. 147	
C.T. 148	
C.T. 149	
C.T. 151	
C.T. 152	
C.T. 153	
C.T. 167	
C.T. 168	
C.T. 169	
C.T. 171	
C.T. 172	
Southern Wyoming County	01
County—Wyoming:	
Parts of county:	
Exeter Township	
Faus Township	
Monroe Township	
Northmoreland Township	
Noxen Township	
Tri-Town Service Area	04
County—Dauphin:	
Parts of county:	
Lykens Borough	
Williamstown Borough	
Gratz Borough	
Wisconisco Township	
County—Schuylkill:	
Parts of county:	
Tower City Borough	
Frailey Township	
Valleys Community	01
County—Franklin:	
Parts of county:	
Fannet Township	
Metal Township	
Welsh Mountain	02
County—Lancaster:	

PENNSYLVANIA—Continued

Service area name	Degree of shortage group
Parts of county:	
Salisbury Township	
Caernarvon Township	
Earl Township	
East Earl Township	
West Greene	01
County—Greene:	
Parts of county:	
Alleppo Township	
Gilmore Township	
Gray Township	
Jackson Township	
Richhill Township	
Springhill Township	
Center Township	
Freeport Township	
Morris Township	
Washington Township	
Wayne Township	
York City	04
County—York:	
Parts of county:	
C.T. 1	
C.T. 2	
C.T. 3	
C.T. 5	
C.T. 7	
C.T. 10	
C.T. 15	
C.T. 16	

SOUTH CAROLINA

County Listing

County name	Degree of shortage group
Abbeville	04
Allendale	01
Bamberg	02
Berkeley	03
Calhoun	01
Cherokee	04
Chester	04
Colleton	02
Lancaster	02
McCormick	02
Richland:	
Service area, Richland	01
Saluda	03
Union	04

Service Area Listing

Service area name	Degree of shortage group
Richland	01
County—Richland:	
Parts of county:	
C.T. 118	
C.T. 119.02	
C.T. 120	

SOUTH DAKOTA

County Listing

County name	Degree of shortage group
Buffalo	01
Campbell	01
Charles Mix	04
Corson	01
Deuel	01
Dewey	01
Edmunds	01
Faulk	01
Gregory	01
Haakon	01

SOUTH DAKOTA—Continued

County Listing

County name	Degree of shortage group
Hanson	01
Harding	01
Jackson	01
Lyman	01
McCook	01
Marshall	01
Meade:	
Service area, Faith	01
Mellette	01
Moody	03
Perkins:	
Service area, Faith	01
Roberts	02
Sanborn	01
Shannon	01
Sully	01
Todd	01
Washabaugh	01
Yankton:	
Service area, Human Services Center	03
Ziebach	01

Service Area Listing

Service area name	Degree of shortage group
Faith	01
County—Meade:	
Parts of county:	
Eagle Township	
Faith City	
Unorganized Territory of Northern Meade	
County—Perkins:	
Parts of county:	
Ada Township	
Antelope Township	
Beck Township	
Chance Township	
Chaudoin Township	
Duell Township	
Englewood Township	
Flint Rock Township	
Foster Township	
Hall Township	
Highland Township	
Lone Tree Township	
Maltby Township	
Martin Township	
Moreau Township	
Vickers Township	
Vrooman Township	
Wyandotte Township	
Unorganized Territory of Deep Creek	
Unorganized Territory of East Perkins	
Unorganized Territory of South Perkins	
Unorganized Territory of S.W. Perkins	
Unorganized Territory of W.C. Perkins	
Unorganized Territory of Western Perkins	
Human Services Center	03
County—Yankton:	
Parts of county:	
Human Services Center	

TENNESSEE

County Listing

County name	Degree of shortage group
Anderson	01
Henry	01

TENNESSEE—Continued

County Listing

County name	Degree of shortage group
Johnson	02
Lewis	04
Perry	03
Pickett	01
Wayne	03

TEXAS

County Listing

County name	Degree of shortage group
Bandera	03
Bexar:	
Service area, East Side (San Antonio)	03
Service area, West Side (San Antonio)	02
Service area, South Side (San Antonio)	02
Service area, Southern Rural Bexar	01
Cameron	03
Cochran	04
Dallas:	
Service area, Trinity	02
Service area, Fair Park/White Rock Creek Industrial	01
Service area, South Dallas	01
Service area, Lisbon	03
Dimmit	01
Duval	01
Edwards	01
Frio	01
Hardin	04
Karnes	04
Kinney	01
La Salle	03
Live Oak:	
Service area, McMullen/Live Oak	02
McMullen:	
Service area, McMullen/Live Oak	02
Maverick	01
Newton	04
Polk	02
San Jacinto	01
Shelby	03
Trinity	02
Uvalde	03
Val Verde	03
Waller	04
Webb	02
Zapata	01
Zavala	01

Service Area Listing

Service area name	Degree of shortage group
East Side (San Antonio)	03
County—Bexar:	
Parts of county:	
C.T. 1301	
C.T. 1303	
C.T. 1304	
C.T. 1305	
C.T. 1306	
C.T. 1307	
C.T. 1308	
C.T. 1309	
C.T. 1310	
C.T. 1311	
C.T. 1312	
C.T. 1313	
Fair Park/White Rock Creek Industrial	01
County—Dallas:	
Parts of county:	
C.T. 23	
C.T. 25	
C.T. 26	
C.T. 27.01	
C.T. 27.02	

TEXAS—Continued

Service area name	Degree of shortage group
C.T. 28	
C.T. 93.02	
C.T. 115	
Lisbon	03
County—Dallas:	
Parts of county:	
C.T. 56	
C.T. 57	
C.T. 59.01, 59.02	
C.T. 87.01, 87.02	
C.T. 88	
McMullen/Live Oak	02
County—Live Oak	
County—McMullen	
South Dallas	01
County—Dallas:	
Parts of county:	
C.T. 29	
C.T. 30	
C.T. 31.02	
C.T. 32.02	
C.T. 33	
C.T. 34	
C.T. 35	
C.T. 36	
C.T. 37	
C.T. 38	
C.T. 39.01	
C.T. 39.02	
C.T. 40	
South Side (San Antonio)	02
County—Bexar:	
Parts of county:	
C.T. 1501	
C.T. 1503	
C.T. 1504	
C.T. 1505	
C.T. 1506	
C.T. 1507	
C.T. 1510	
C.T. 1601	
C.T. 1602	
C.T. 1603	
C.T. 1604	
C.T. 1605	
Southern Rural Bexar	01
County—Bexar:	
Parts of county:	
C.T. 1314	
C.T. 1315	
C.T. 1316	
C.T. 1318	
C.T. 1416	
C.T. 1417	
C.T. 1418	
C.T. 1419	
C.T. 1519	
C.T. 1520	
C.T. 1521	
C.T. 1522	
C.T. 1610	
C.T. 1611	
C.T. 1612	
C.T. 1619	
C.T. 1620	
Trinity	02
County—Dallas:	
Parts of county:	
C.T. 41	
C.T. 49	
C.T. 54	
C.T. 55	
C.T. 86	
C.T. 89	
West Side (San Antonio)	02
County—Bexar:	
Parts of county:	
C.T. 1606	
C.T. 1607	
C.T. 1701	
C.T. 1703	
C.T. 1704	
C.T. 1707	
C.T. 1708	
C.T. 1709	
C.T. 1710	
C.T. 1711	
C.T. 1712	
C.T. 1715	
C.T. 1716	

UTAH

County Listing

County name	Degree of shortage group
Daggett	01
Piute	01
Rich	01
Wayne	01

VERMONT

County Listing

County name	Degree of shortage group
Addison:	
Service area, Addison	02
Essex	04
Grand Isle	01
Washington:	
Service area; Plainfield	01

Service area Listing

Service area name	Degree of shortage group
Addison	02
County—Addison:	
Parts of county:	
Addison	
Bridport	
Bristol	
Ferrisburg	
Lincoln	
Monkton	
New Haven	
Orwell	
Panton	
Shoreham	
Waltham	
Starksboro	
Plainfield	01
County—Washington:	
Parts of county:	
Woodbury Town	
Cabot Town	
Calis Town	
Marshfield Town	
East Montpelier Town	
Plainfield Town	

VIRGINIA

County Listing

County name	Degree of shortage group
Accomack	04
Amelia	02
Bath	02
Brunswick	02
Charlotte	02
Fluvanna	01
Greene	01
King George	01
Lee	03
Louisa	01
Lunenburg	02
Madison	03
Mathews	02
Orange	04
Rappahannock	01
Richmond:	
Service area, Randolph	01
Russell	01
Southampton	01
Surry	01
Sussex	01

VIRGINIA—Continued

County Listing

County name	Degree of shortage group
Tazewell	04
Wise	03

Service Area Listing

Service area name	Degree of shortage group
Randolph	
County—Richmond:	01
Parts of county:	
C.T. 411	
C.T. 413	
C.T. 414	

WASHINGTON

County Listing

County name	Degree of shortage group
Adams:	
Migrant Population	02
Grant:	
Migrant Population	02
King:	
Seattle and King County Jails	02
Pend Oreille	04
Snohobish:	
Tulalip Tribe	04

Service Area Listing

Service area name	Degree of shortage group
Migrant Population	02
County—Adams:	
County—Grant:	
Seattle and King County jails	02
County—King:	
Parts of county:	
Seattle and King County jails	
Tulalip Tribe	04
County—Snohobish	

WEST VIRGINIA

County Listings

County name	Degree of shortage group
Barbour	02
Boone	03
Calhoun	01
Doddridge	03
Fayette:	
Service area, Fayetteville	02
Gilmer	04
Grant:	
Service area, Mount Storm	01
Greenbrier:	
Service area, Greenbrier	02
Hampshire:	
Service area, Capon Bridge	01
Kanawha:	
Service area, St. Albans	04
Lincoln	01
Logan	03
McDowell	01
Marshall:	
Service area, Wetzel	01

WEST VIRGINIA—Continued

County Listings

County name	Degree of shortage group
Mason County:	
Service area, Mason County Service Area	01
Mercer:	
Service area, Mercer	01
Mineral:	
Service area, Cabin Run	02
Mingo:	
Service area, Mingo	01
Monongalia:	
Service area, Blacksville	01
Monroe	01
Nicholas:	
Service area, Nicholas-Webster	03
Pleasants:	
Service area, Jefferson	01
Preston	02
Putnam	03
Ritchie	02
Summers	04
Taylor	03
Tucker	03
Tyler:	
Service area, Tyler	01
Wayne	02
Webster:	
Service area, Nicholas-Webster	03
Wetzel:	
Service area, Wetzel	01
Wirt	01
Wyoming	03

Service Area Listing

Service area name	Degree of shortage group
Blacksville	01
County—Monongalia:	
Parts of county:	
Clay	
Battelle	
Cabin Run	02
County—Mineral:	
Parts of county:	
Frankfurt	
Cabin Run	
Capon Bridge	01
County—Hampshire:	
Parts of county:	
Bloomery	
Capon	
Sherman	
Gore	
Fayetteville	02
County—Fayette:	
Parts of county:	
Fayetteville	
Falls	
Quinnimont	
Sewell Mountain	
Nuttall	
Mountain Cove	
Greenbrier	02
County—Greenbrier:	
Parts of county:	
Meadow Bluff	
Jefferson	01
County—Pleasants:	
Parts of county:	
Grant	
Jefferson	
LaFayette	
Mc Kim	
Union	
Mason County Service Area	01
County—Mason County:	
Parts of county:	
Arbuckle District	
Clendenin District	
Cologne District	
Cooper District	

WEST VIRGINIA—Continued

Service area name	Degree of shortage group
Graham District	
Hannan District	
Robinson District	
Union District	
Waggener District	
Mercer	01
County—Mercer:	
Parts of county:	
Rock	
Jumping Branch	
Plymouth	
Mingo	01
County—Mingo:	
Parts of county:	
Hainey	
Hardie	
Kermit	
Lee	
Magnolia	
Mt. Storm	01
County—Grant:	
Parts of county:	
Union	
Nicholas-Webster	03
County—Nicholas	
County—Webster	
St. Albans	04
County—Kanawha:	
Parts of county:	
Big Sandy	
Cabin Creek	
Elk	
St. Albans City	
Chesapeake Town	
Malden	
Union	
Washington	
Marmet Town	
Tyler	01
County—Tyler:	
Parts of county:	
Centreville	
Ellsworth	
McElroy	
Meade	
Union	
Wetzel	01
County—Marshall:	
Parts of county:	
Liberty District	
Meade District	
Cameron District	
Webster District	
County—Wetzel:	
Parts of county:	
Clay District	
Church District	
Center District	

WISCONSIN

County Listing

County name	Degree of shortage group
Adams	04
Buffalo:	
Service area, Whitehall/Arcadia	01
Crawford:	
Service area, Kickapoo Valley	01
Florence	01
Forest:	
Service area, Iron County area—See Michigan Service area Listing	04
Service area, Mountain	01
Iron	03
Jackson	02
Juneau:	
Service area, Hillsboro area	02
Langlade:	
Service area, Mountain	01
Marathon:	
Service area, Athens	02
Milwaukee:	
Service area, Inner City North (Milwaukee)	01
Monroe:	
Service area, Hillsboro area	02

WISCONSIN—Continued

County Listing

County name	Degree of shortage group
Oconto:	
Service area, Mountain	01
Richland:	
Service area, Kickapoo Valley	01
Service area, Hillsboro area	02
Sauk:	
Service area, Hillsboro area	02
Trempealeau:	
Service area, Whitehall/Arcadia	01
Vernon:	
Service area, Kickapoo Valley	01
Service area, Hillsboro area	02
Vilas:	
Service area, Iron County Area—See Michigan Service, Area Listing	04

Service Area Listing

Service area name	Degree of shortage group
Athens	02
County—Marathon:	
Parts of county:	
Athens City	
Bein Township	
Halsey Township	
Hamburg Township	
Johnson Township	
Rietbrock Township	
Hillsboro, Area	02
County—Juneau:	
Parts of county:	
Wonewoc (Village)	
Wonewoc(Township)	
County—Monroe:	
Parts of county:	
Cashton	
Jefferson	
Kendall (Village)	
Sheldon	
Wellington	
Glendale	
County—Richland:	
Parts of county:	
Yuba (Village)	
Henrietta	
Westford	
Bloom Town (Part)	
County—Sauk:	
Parts of county:	
La Valle	
Woodland	
County—Vernon:	
Parts of county:	
Clinton	
Hillsboro (City)	
Ontario (Village)	
Stark	
Whitestown	
Hillsboro (Township)	
Greenwood	
Union Town (Part)	
Forest	
Inner City North (Milwaukee)	01
County—Milwaukee:	
Parts of county:	
C.T. 66	
C.T. 67	
C.T. 68	
C.T. 69	
C.T. 70	
C.T. 81	
C.T. 82	
C.T. 83	
C.T. 84	
C.T. 85	
C.T. 86	
C.T. 101	
C.T. 102	
C.T. 103	
C.T. 104	

WISCONSIN—Continued

Service area name	Degree of shortage group
C.T. 105	
C.T. 106	
C.T. 114	
C.T. 115	
C.T. 116	
C.T. 117	
C.T. 118	
C.T. 139	
C.T. 140	
C.T. 141	
C.T. 142	
Kickapoo Valley	01
County—Crawford:	
Parts of county:	
Utica Town	
Mount Sterling Village	
Gays Mills Village	
Bell Center Village	
Haney Town	
Scott Town	
Clayton Town	
Soldiers Grove Village	
County—Richland:	
Parts of county:	
Bloom Town (Part)	
Viola Village (Part)	
Sylvan Village (Part)	
Forest Town	
County—Vernon:	
Parts of county:	
Union Town (Part)	
Stark Town	
La Farge Village	
Forest Town	
Ontario Village	
Whitestown Town	
Clinton Town	
Webster Town	
Liberty Town	
Viola Village (Part)	
Kickapoo Town	
Readstown Village	
Mountain	01
County—Forest:	
Parts of county:	
Freedom Township	
Wabeno Township	
Blackwell Township	
County—Langlade:	
Parts of county:	
Evergreen Township	
Wolf River Township	
White Lake Village	
County—Oconto:	
Parts of county:	
Townsend Township	
Lakewood Township	
Doty Township	
Riverview Township	
Armstrong Township	
Breed Township	
Bagley Township	
Brazeau Township	
Whitehall/Arcadia	01
County—Buffalo:	
Parts of county:	
Cross	
Glencoe	
Milton	
County—Trempealeau:	
Parts of county:	
Arcadia (City)	
Arcadia (Township)	
Blair (City)	
Burnside (Town)	
Chimney Rock	
Dodge	
Hale	
Independence (City)	
Lincoln	
Pigeon	
Pigeon Falls (Village)	
Preston	
Whitehall	

WYOMING

County Listing

County name	Degree of shortage group
Albany:	
Service area, Hanna-Rock River	01
Campbell	03
Carbon:	
Service area, Hanna-Rock River	01
Converse	04
Crook	03
Freemont:	
Service area, Sweetwater	01
Service area, Dubois	01
Johnson:	
Service area, Kaycee	01
Natrona:	
Service area, Sweetwater	01
Platte	03
Sublette:	
Service area, Big Piney	01

Service Area Listing

Service area name	Degree of shortage group
Big Piney	01
County—Sublette:	
Parts of county:	
Big Piney CCD	
Dubois	01
County—Fremont:	
Parts of county:	
Dubois CCD	
Hanna-Rock River	01
County—Albany:	
Parts of county:	
Rock River CCD	
County—Carbon:	
Parts of county	
Hanna CCD	
Kaycee	01
County—Johnson:	
Parts of county	
Kaycee CCD	
Sweetwater	01
County—Freemont:	
Parts of county:	
Sweetwater CCD	
Shoshoni CCD	
County—Natrona:	
Parts of county:	
Hell's Half Acre CCD	

AMERICAN SAMOA

County Listing

County name	Degree of shortage group
Manu'a District	01
Eastern Tutuila District:	
Service area, Tutuila Island—Aunu'u	03
Western Tutuila District:	
Service area, Tutuila Island—Aunu'u	03

Service Area Listing

Service area name	Degree of shortage group
Tutuila Island—Aunu'u	03
County—Eastern Tutila District	
County—Western Tutuila District	

PUERTO RICO

Municipio Listing

Municipio name	Degree of shortage group
Adjuntas:	
Service area, Guaraguao community	01
Barranquitas:	
Service area, Barranquitas	01
Comerio:	
Service area, Barranquitas	01
Corozal:	
Service area, Barranquitas	01
Naranjito:	
Service area, Barranquitas	01
Orocovis:	
Service area, Barranquitas	01
Penuelas:	
Service area, Guaraguao community	01
Ponce:	
Service area, Guaraguao community	01

Service Area Listing

Service area name	Degree of Shortage group
Barranquitas	01
Municipio—Barranquitas	
Municipio—Comerio	
Municipio—Corozal	
Municipio—Naranjito	
Municipio—Orocovis	
Guaraguao community	01
Municipio—Adjuntas:	
Parts of county:	
Portugues barrio	
Municipio—Penuelas:	
Parts of county:	
Rucio barrio	
Municipio—Ponce:	
Parts of county:	
Guaraguao barrio	

VIRGIN ISLANDS

County Listing

County name	Degree of Shortage group
St. Croix:	
Service area, Fredericksted	01

Service Area Listing

Service area name	Degree of shortage group
Fredericksted	01
Island—St. Croix:	
Island Subdivisions:	
E.D. 13	
E.D. 14	
E.D. 19	
E.D. 20	
E.D. 21	
E.D. 22	
E.D. 23	
E.D. 24	
E.D. 25	

SUPPLEMENTAL LIST OF NHSC-STAFFED DENTAL SITES PREVIOUSLY DESIGNATED UNDER SECTION 329 (b)

ALABAMA

Macon County—John Andrero Clinic, Tuskegee (Macon County)

ARKANSAS

Perry County—Perry County, Perryville (Perry County)

COLORADO

Saguache County—Saguache Dental Clinic, Saguache (Saguache County)

FLORIDA

Franklin County—Apalachicola Health Clinic, Apalachicola (Franklin County)
Frostburg—Florida Rural Health Service, Frostburg (Polk County)
Immokalee—Immokalee Health Care Center, Immokalee (Collier County)

LOUISIANA

West Carroll Parish—West Carroll Hospital Inc., Oak Grove (West Carroll Parish)

MAINE

Washington County—Lubec Medical Center, Lubec (Washington County)

MAINE

Washington County—Washington County Health Plan, Eastport (Washington County)
Vinalhaven Service Area—Island Community Medical Center, Vinalhaven (Knox County)
Rangeley-Kingfield Service Area—Rangeley Health Council, Rangeley (Franklin County)

MISSISSIPPI

Bolivar County—Levee Street Clinic, Rosedale (Bolivar County)

MONTANA

Liberty Dental Service Area—Liberty County Health Planning, Chester (Liberty County)
Daniels County—Prairie Professional Clinic, Seobey (Daniels County)
Roosevelt County—medical Dental Center, Poplar (Roosevelt County)
Shelby—Health Planning Council, Shelby (Toole County)

NEW MEXICO

Rio Arriba County—La Clinica del Pueblo de Rio, Tierra Amarilla (Rio Arriba County)
Rio Arriba County—El Rito Betterment Association, El Rito (Rio Arriba County)
Ft. Sumner-Santa Rosa Service Area—Santa Rosa Dental Clinic, Santa Rosa (Guadalupe County)
Rio Arriba County—Home Education Livelihood Project, Espanola (Rio Arriba County)

NORTH CAROLINA

Northhampton County—Northhampton Medical Center, Jackson (Northhampton County)
Greene County—Greene County Health Care, Snow Hill (Greene County)
Cherokee County—Upper Hiawassee Dental Project, Murphy (Cherokee County)

NORTH DAKOTA

Grant County—Grant County Medical and Dental, Elgin (Grant County)
McIntosh County—Ashley Lions Dental Clinic, Ashley (McIntosh County)
Oliver County—Oliver County Health Service, Center (Oliver County)

OKLAHOMA

Osage County—Fairfax Dental Office, Fairfax (Osage County)

PUERTO RICO

Mayaquez Service Area—Mayaquez Medical Center, Mayaquez
Rincon Service Area—Rincon Rural Health, Rincon
San Sebastian Service Area—San Sebastian Western Region Health, San Sebastian

TENNESSEE

Decatur County—Decatur County Medical Center, Parsons (Decatur County)
Claiborne County—Tazewell Dental Clinic, Tazewell (Claiborne County)
Morgan County—Morgan County Medical Center, Wartburg (Morgan County)
Hickman County—Family Dental Clinic, Centerville (Hickman County)
Hancock County—Hancock County Health Planning, Sneedville (Hancock Company.)
Campbell County—Town of Elk Valley, Elk Valley (Campbell County)
Carter County—Cloudland Dental Clinic, Roan Mountain (Carter County)
Cheatham County/Springfield Service Area—Cheatham County Health Services, Ashland City (Cheatham County)

TEXAS

Starr County—Starr County, Rio Grand City (Starr County)
Farwell Service Area—Farwell Clinic, Farwell (Parmes County)

VIRGINIA

Dickenson County—Haysi Community Clinic, Haysi (Dickenson County)
Grayson County—Troutdale Community Health Clinic, Troutdale (Grayson County)
Craig County—Craig Dental Clinic, New Castle (Craig County)
Buckingham/Cumberland/Fluvanna Service Area—Central Virginia Community Health, New Canton (Buckingham County)

[FR Doc. 78-33991 Filed 12-28-78; 8:45 am]

federal register

FRIDAY, DECEMBER 29, 1978

PART V

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND 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 rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISIONS

OHIO.—OH78-2167.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL78-1069	Sept. 8, 1978.
Arizona:	
AZ78-5114	Aug. 11, 1978.
AZ78-5115	July 28, 1978.
Arkansas:	
AR78-406; AR78-4067; AR78-4069.	June 23, 1978.
AR7878-4071	July 21, 1978.
AR7878-4116	Dec. 8, 1978.
Connecticut:	
CT78-2160; CT78-2161	Dec. 1, 1978.
Kansas:	
KS78-4009	Feb. 3, 1978.
Minnesota:	
MN78-2151	Oct. 27, 1978.
Oklahoma:	
OK78-4054	June 6, 1978.
OK78-4055; OK78-4056; OK78-4057	June 9, 1978.
OK78-4058; OK78-4059; OK78-4060; OK78-4061; OK78-4062	June 16, 1978.
Utah:	
UT78-5128	Oct. 6, 1978.
Virginia:	
VA78-3096	Nov. 24, 1978.

SUPERSEDES 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. Supersedes Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alaska:	
AK78-5020 (AK78-5131)	Mar. 10, 1978.
Ohio:	
OH78-2147 (OH78-2168); OH78-2147; (OH78-2169)	Nov. 13, 1978.
Washington:	
WA78-5105 (WA78-5133)	June 30, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C. This 22d day of December 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

NEW DECISION

STATE: OHIO COUNTIES: *See below
DECISION NO.: OH78-2167 DATE: Date of Publication
DESCRIPTION OF WORK: Residential Construction Consisting of single family homes and garden type apartments up to and including 4 stories.

*Defiance, Fulton, Henry, & Williams

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$6.00				
BRICKLAYERS	7.00				
CARPENTERS	6.41				
CEMENT MASONS	6.50				
DRYWALL FINISHERS	5.50				
DRYWALL HANGERS	7.00				
ELECTRICIANS	6.19				
INSULATORS	5.00				
LABORERS	4.72				
PAINTERS	7.01				
PLUMBERS	6.56				
SHEET METAL WORKERS	5.79				
SOFT FLOOR LAYERS	5.75				
TILE SETTERS	6.60				
TRUCK DRIVERS	5.93				
POWER EQUIPMENT OPERATORS:					
Backhoes	7.14				
Bulldozers	6.59				

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision # AL78-1069 - Mod. # 1 (43 FR-40172 September 8, 1978) Tuscaloosa County, Alabama					
Change:					
Bricklayers	9.85		.40		.05
Electricians	11.45	.55	3%+.40		½ of 1%
Tile workers	9.60		.40		.05
DECISION NO. AZ78-5114 - Mod. #7 (43 FR 35828 - August 11, 1978) Statewide, Arizona					
Change:					
ELECTRICIANS: (Phoenix Area) Zone A (Beginning at the north-east corner, a line extending southward on Bush Highway to McKellips Road; a line extending east on McKellips Road to a point one mile east of the intersection of State Highway 88 and U. S. 60 and 70 near Apache Junction; Southward to Baseline Road; west on Baseline Road to the intersection of Baseline Road and Ellsworth Road; South on Ellsworth Road to Hunt Highway; west on Hunt Highway to Powers Road; a line extending south on Powers Road five miles, then extending straight west to a point five miles west of Interstate 10, then northwest on a line parallel with Interstate 10 to intersect with Pecos Road, west on Pecos Road to intersect with Cotton Lane, North on Cotton Lane to Beloat Road. West on Beloat Road to Airport Road. North on Airport Road in a straight line to intersect Waddell Road. East on Waddell Road to intersect with Cotton Lane, North on Cotton Lane to Deer Valley Drive and east on Deer Valley Drive to intersect with Bush Highway including Luke and Williams Air Force Bases.)	$13.55	.96	3%+.88		3/4%

MODIFICATIONS P. 2

DECISION NO. AZ78-5114 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone B (Area outside of Zone A and bounded by a line formed by measuring sixteen (16) road miles from the outer boundaries of an area enclosed by the following boundaries: Power Road on the east, from Hunt Highway on the south to one mile south of Pinnacle Peak Road on the north; One mile south of Pinnacle Peak Road to Cotton Lane on the west; Cotton Lane to Pecos Road on the south. Pecos Road to Price Road and from Price Road to Hunt Highway on the south. Hunt Highway to Powers Road on the east)	$15.55	.96	3%+.88		3/4%
Zone C (outside edge of Zone B and extended to the outside limits of the Union's jurisdiction)	16.55	.96	3%+.88		3/4%

MODIFICATIONS P. 3

DECISION NO. AZ78-5115 - Mod. #6
(43 FR 33018 - July 28, 1978)
Maricopa County, Arizona

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Zone A (Beginning at the north-east corner, a line extending southward on Bush Highway to McKellips Road; a line extending east on McKellips Road to a point one mile east of the intersection of State Highway 88 and U. S. 60 and 70 near Apache Junction; southward to Baseline Road; west on Baseline Road to the intersection of Baseline Road and Ellsworth Road; South on Ellsworth Road to Hunt Highway; West on Hunt Highway to Powers Road; a line extending south on Powers Road five miles, then extending straight west to a point five miles west of Interstate 10, then northwest on a line parallel with Interstate 10 to intersect with Pecos Road; West on Pecos to intersect with Cotton Lane. North on Cotton Lane to Beloat Road. West on Beloat Road to Airport Road. North on Airport Road in a straight line to intersect Waddell Road. East on Waddell Road to intersect with Cotton Lane. North on Cotton Lane to Deer Valley Drive and east on Deer Valley Drive to intersection with Bush Highway and including Luke and Williams Air Force Bases.)					
Electricians	$ 13.55	.96	3%+.88		3/4%

DECISION NO. A278-5115 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone B (Area outside of Zone A and bounded by a line formed by measuring sixteen (16) road miles from the outer boundaries of an area enclosed by the following boundaries; Power Road on the east from Hunt Highway on the south to one mile south of Pinnacle Peak Road on the north. One mile south of Pinnacle Peak Road to Cotton Lane on the west. Cotton Lane to Pecos Road on the south. Pecos Road to Price Road and from Price Road to Hunt Highway on the south. Hunt Highway to Powers Road on the east.)					
Electricians	$15.55	.96	3%+.88		3/4%
Zone C (Outside edge of Zone B and extend to the outside limits of the Union's jurisdiction)					
Electricians	16.55	.96	3%+.88		3/4%
Ironworkers	12.20	1.34	2.47		.11
Omit:					
Electricians:					
Zone A - Cable Splicers	12.64	.96	3%+.88		3/4%
Zone B - Cable Splicers	14.85	.96	3%+.88		3/4%
Zone C - Cable Splicers	15.99	.96	3%+.88		3/4%

DECISION NO. AR78-4064 - Mod. #3 (43 FR 27341 - June 23, 1978) Pulaski County, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Carpenters	$ 9.22	.45	.35		.05
Millwrights & Piledrivermen	9.72	.45	.35		.05
ROOFERS	9.00		.10		
BOILERMAKERS	11.05	.80	1.00		.02
DECISION NO. AR78-4067 - Mod. #3 (43 FR 27342 - June 23, 1978) Garland, Hot Springs & Clark Counties, Arkansas					
CHANGE:					
Carpenters (Garland County and northern 2/3 of Hot Springs Co.					
CARPENTERS CONTRACTS UNDER $1,000,000:					
Carpenters	8.43	.45	.35		.05
Millwrights-Piledrivermen	8.93	.45	.35		.05
Carpenters (Clarke and Remainder of Hot Springs County					
Carpenters	9.22	.45	.35		.05
Millwrights & Piledrivermen	9.72	.45	.35		.05
PLUMBERS & PIPEFITTERS:					
Zone A	10.45	.60	.55		.10
Zone B	11.10	.60	.55		.10
Zone C	11.65	.60	.55		.10
ROOFERS	9.00		.10		
LABORERS:					
Group I	6.25	.33	.60		
Group II	6.50	.33	.60		
Group III	6.65	.33	.60		
Group IV	6.75	.33	.60		
Group V	6.90	.33	.60		
Group VI	7.15	.33	.60		
Group VII	7.05	.33	.60		

MODIFICATIONS P. 6

DECISION NO. AR78-4069 - Mod. #2 (43 FR 27346 - June 23, 1978) Jefferson County, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$11.05	.80	1.00		.02
CARPENTERS (WORK IN EXCESS OF $1,000,000:					
Carpenters	9.22	.45	.35		.05
Millwrights & Piledrivermen	9.72	.45	.35		.05
CARPENTERS (WORK UNDER $1,000,000:					
Carpenters	8.52	.45	.35		.05
Millwrights & Piledrivermen	9.02	.45	.35		.05
ELECTRICIANS:					
Electricians	11.00	.50	3%+.45		1/4%
Cable splicers	11.125	.50	3%+.45		1/4%
ROOFERS	9.00		.10		
PAINTERS:					
Painters, paperhangers & steam cleaners, sheetrock finishers and wall cover hangers	8,50		.40		.02
Spray gun operators and sand blasterers	9.10		.40		.02
All skeleton steel and all work on stages, structural steel over 30 feet high	8.75		.40		.02
PLUMBERS:					
0 to 9 miles from Jefferson County Courthouse	10.45	.60	.55		.10
9 to 45 miles from Jefferson County Courthouse	11.10	.60	.55		.10
45 miles and over from Jefferson County Courthouse	11.65	.60	.55		.10
DECISION NO. AR78-4071 - Mod. #4 (43 FR 31550 - July 21, 1978) Union & Ouachita Counties, Arkansas					
CHANGE:					
BOILERMAKERS	$11.05	.80	1.00		.02
CARPENTERS:					
Carpenters	8.52	.45	.35		.05
Millwrights & Piledrivermen	9.02	.45	.35		.05
BRICKLAYERS	8.65	.40	.35		.04
ROOFERS	9.00		.10		
DECISION NO. AR78-4116 - Mod. #1 (43 FR 57779 - December 8, 1978) Sebastian, Crawford and Washington Counties, Arkansas					
CHANGE:					
ROOFERS	9.00		.10		

MODIFICATIONS P. 7

DECISION #CT78-2160 - MOD #2 (43 FR 56362 - December 1, 1978) Fairfield, Litchfield, Windham Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
IRONWORKERS: Ornamental, Reinforcing; Structural and Precast Concrete Erection	$12.25	.90	1.45	m	.08
PLUMBERS; STEAMFITTERS: Fairfeild Co.: Greenwich	10.40	.60	.80		.02
DECISION #CT78-2161 - MOD #2 (43 FR 56370 - December 1, 1978) Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut					
CHANGE:					
ELECTRICIANS: Hartford Co.: Berlin, Bristol, New Britain, Newington, Plainville, Southington, New Haven: Remainder of the county; New London Co.: E. Lyme, New London, Fishers Island Sound, Old Lyme, Groton, Waterford & Ledyard (Submarine Base only)	10.80	1.00	3%+.52		½%
IRONWORKERS: Ornamental, Reinforcing; Structural and Precast Concrete Erection	12.25	.90	1.45	m	.08

DECISION #CT78-2161 - MOD #2
(43 FR 56370 - December 1, 1978)
Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
LINEMEN:					
Cross County Transmission Lines and Railroads					
Linemen, Cable Splicer & Dynamite Man	$ 9.98	.70	3%+.50	o	
Heavy Equipment Operator	9.02	.70	3%+.50	o	
Equipment Operator, Tractor Trailer Driver, & Field Mechanic	8.46	.70	3%+.50	o	
Material Man	8.37	.70	3%+.50	o	
Groundman, Truck Driver	7.53	.70	3%+.50	o	

Decision #KS78-4009-Mod #3
(43 FR-4814-February 3,1978)
Shawnee County, Kansas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers	$10.80	.70	1.40	1.00	.05

DECISION #MN78-2151 - Mod. #2
(43 FR 50337 - October 27, 1978)
Benton, Sherburne & Stearns Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Carpenters:					
Building Construction					
Cities of Little Rock & Skaja in Benton County					
Carpenters	$10.05				
Stearns Co., Remainder of Benton & Sherburne Cos:					
Carpenters & Piledrivermen	10.48	.35		.75	

DECISION NO. OK78-4054 - Mod. #5 (43 FR 25268 - June 6, 1978) Oklahoma, Cleveland, Caddo, Grady, Canadian, Kingfisher, Lincoln, Logan, McClain, Seminole, and Pottawatomie Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
PLASTERERS	$10.70				.01
SOFT FLOOR LAYERS	9.60	.50			.03
ELECTRICIANS:					
Zone I	11.35	.70	3%+.50		1%
Zone II	11.60	.70	3%+.50		1%
Zone III	11.85	.70	3%+.50		1%
CABLE SPLICERS:					
Zone I	11.60	.70	3%+.50		1%
Zone II	11.85	.70	3%+.50		1%
Zone III	12.10	.70	3%+.50		1%
LATHERS	10.70				.01
PLASTERERS	10.70				.01
SOFT FLOOR LAYERS	9.60	.50		.25	.03
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable Splicers	11.29		3%		1/2%
Hole digger Operator	9.62		3%		1/2%
Heavy equipment operators (or pole cat equivalent)	9.62		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman (1st year)	5.51		3%		1/2%
Groundman	7.07		3%		1/2%
Truck driver (flat bed, ton & half and under)	7.55		3%		1/2%

DECISION NO. OK78-4055 - Mod. #4 (43 FR 25270 - June 9, 1978) Tulsa, Creek, Craig, Ottawa, Delaware, Mayes and Rogers Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
SHEET METAL WORKERS	$11.27	.50	.66		.10
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger operator	9.62		3%		1/2%
Heavy equipment op. (pole or cat equivalent)	9.62		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Powderman	9.62		3%		1/2%
Truck driver (flat bed ton, and half and under)	7.55		3%		1/2%
LATHERS	10.65				.01

DECISION NO. OK78-4056 - Mod. #3 (43 FR 25273 - June 9, 1978) Muskogee, Adair, Cherokee and Okmulgee Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS	11.20	.60	.40		.05
CEMENT MASONS (AREA I)					
Cement masons	9.90				
Power tool operators	10.15				
SHEET METAL WORKERS	11.27	.50	.66		.10
PLUMBERS & PIPEFITTERS	12.00	.55	.80		.15
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger op. & Heavy equip. op. (pole or cat equivalent	9.62		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman	7.07		3%		1/2%
Truck driver(flat bed ton and half and under	7.55		3%		1/2%
LATHERS	10.65				.01

DECISION NO. OK78-4057 - Mod. #3 (43 FR 25275 - June 9, 1978) Latimer, Leflore, Haskell, Sequoyah and Pushmataha Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS-STONEMASONS	$11.20	.60	.40		.05
CARPENTERS (AREA III)					
Millwrights & Piledrivermen	9.35	.45	.75		.06
ELECTRICIANS - AREA I					
Electricians	11.00	.35	3%+5.5%		1/4%
Cable splicers	11.25	.35	3%+5.5%		1/4%
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger operator	9.62		3%		1/2%
Heavy equipment operator (or pole cat equivalent)	9.62		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman (1st year)	5.51		3%		1/2%
Groundman	7.07		3%		1/2%
Truck driver (flat bed, ton & half and under)	7.55		3%		1/2%
MARBLE SETTERS	10.56		.30		
TILE & TERRAZZO WORKERS	10.56		.30		
TILE & TERRAZZO FINISHERS:					
Experienced finishers	8.72				
Floor machine operator	8.84				
Base machine operator	9.06				
PLASTERERS	9.70				/02
PLUMBERS & PIPEFITTERS:					
Leflore, Sequoyah, Latimer and Haskell Counties	12.00	.55	.80		.15
SHEET METAL WORKERS	11.27	.50	.66		.10
SOFT FLOOR LAYERS	7.71		.45	.81a	.03

DECISION NO. OK78-4058 - Mod. #3 (43 FR 26258 - June 16, 1978) McIntosh County, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CEMENT MASONS	$ 9.90				
PLUMBERS-STEAMFITTERS	12.00	.55	.80		.15
SHEET METAL WORKERS	11.27	.50	.66		.10
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger operator	9.62		3%		1/2%
Heavy equipment operator (or pole cat equivalent)	9.62		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman	9.62		3%		1/2%
Truck driver (flat bed, ton & half and under	7.55		3%		1/2%

DECISION NO. OK78-4059 - Mod. #3 (43 FR 26258 - June 16, 1978) Wagoner County, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS	11.20	.60	.40		.05
CEMENT MASONS (ZONE II)					
Remainder of Wagoner County	9.90				
PLUMBERS & STEAMFITTERS	12.00	.55	.80		.15
SHEET METAL WORKERS	11.27	.50	.66		.10
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger operator	9.62		3%		1/2%
Heavy equipment operator (or pole cat equivalent)	9.62		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman	7.07		3%		1/2%
Truck driver (flat bed, ton and half and under)	7.55		3%		1/2%

DECISION NO. OK78-4060 - Mod. #2
(43 FR 26263 - June 16, 1978)
Garfield County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Zone I	$11.35	.70	3%+.50		1/2%
Zone II	11.60	.70	3%+.50		1/2%
Zone III	11.85	.70	3%+.50		1/2%
CABLE SPLICERS:					
Zone I	11.60	.70	3%+.50		1/2%
Zone II	11.85	.70	3%+.50		1/2%
Zone III	12.10	.70	3%+.50		1/2%

DECISION NO. OK78-4061 - Mod. #3
(43 FR 26269 - June 16, 1978)
Comanche County, Oklahoma

CHANGE:					
BRICKLAYERS-STONEMASONS	9.91	.62	.40		.12
SOFT FLOOR LAYERS	9.60	.50		.25	.03

DECISION NO. OK78-4062 - Mod. #3
(43 FR 26265 - June 16, 1978)
Pittsburg County, Oklahoma

CHANGE:					
SHEET METAL WORKERS	11.27	.50	.66		.10
SOFT FLOOR LAYERS	7.71		.45	.81a	.03
PLUMBERS-PIPEFITTERS	12.00	.55	.80		.15
BRICKLAYERS	10.25	.45	.40		.05
LINE CONSTRUCTION:					
Linemen	10.60		3%		1/2%
Cable splicers	11.29		3%		1/2%
Hole digger operator	9.62		3%		1/2%
Heavy equipment op.(or pole cat equivalent)	9.62		3%		1/2%
Line truck driver (winch op.)	8.71		3%		1/2%
Jackhammerman	7.93		3%		1/2%
Powderman	9.62		3%		1/2%
Groundman	7.07		3%		1/2%
Truck driver (flat bed, ton & half and under)	7.55		3%		1/2%

DECISION #UT78-5128 - Mod. #3
(43 FR 46480 - October 6, 1978)
Statewide Utah

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Roofers	$10.24	.57	.35		.05
Sheet Metal Workers	11.75	.60	.87		.10

DECISION NO. VA78-3096 - Mod # 1
(43 FR 55218 - November 24, 1978)
Campbell County and the Independent City of Lynchburg, Virginia

Change:
Location to Read:
County: Campbell County and the Independent City of Lynchburg

SUPERSEDEAS DECISION

STATE: Alaska
COUNTIES: Statewide
DECISION NUMBER: AK78-5131
DATE: Date of Publication
SUPERSEDES Decision No. AK78-5020 dated March 10, 1978, in 43 FR 10160
DESCRIPTION OF WORK: Building Construction (including residential construction consisting of single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction and Dredging.

AREA I (North of the 63rd Parallel)
AREA II (South of the 63rd Parallel and West of the 141st Meridian)
AREA III (East of the 141st Meridian)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$20.36	.44	$ 1.20		.10
BOILERMAKERS	17.485	1.075	1.00	.75	.02
BRICKLAYERS; Blocklayers; Stonemasons	16.68	.90	2.45		.09
CARPENTERS:					
Area I					
Carpenters	16.86	.90	2.00		.10
Powder actuated tool operator	17.25	.90	2.00		.10
DeWalt or similar type saw operator; Marlite and Acoustical; Fire or Floor Repair work applicators; Nailing Machine Operator; Saw Filer	17.25	.90	2.00		.10
Millwrights	17.40	.90	2.00		.10
Piledrivermen	15.82	.70	1.65		.10
Areas II and III					
Journeyman Carpenters	15.81	.70	1.65		.15
Acoustical and Marlite Applicators; Floor Workers; Radial Air Saw Operators; Fire and Floor Workers	16.19	.70	1.65		.15
Millwrights	16.34	.70	1.65		.15
Piledrivermen	15.82	.70	1.65		.15
CEMENT MASONS:					
Cement Masons, paving (concrete), Curb, Gutter and Sidewalks	14.30	.80	2.33		.15
Operating Screeding and Rodding Machines, applicator of all Composition, Mastic, Epoxy and Plastic Materials	14.83	.80	2.33		.15
Hand Powered Grinder	14.83	.80	2.33		.15
Form Setters	14.45	.80	2.33		.15
CULINARY WORKERS:					
Baker of Combination Cook-Baker, Head Cook; Working Camp Manager	13.31	.50	2.00		.04
Cook	12.95	.50	2.00		.04
Butcher	12.06	.50	2.00		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CULINARY WORKERS: (Cont'd)					
Head Waiter or Head Waitress	$12.57	.50	$ 2.00		.04
Head Bullcook	11.47	.50	2.00		.04
Camp Worker (waiter, waitress, Bullcook, General Helper, Miscellaneous Worker); Bartender	11.31	.50	2.00		.04
ELECTRICIANS:					
Electricians; Technicians	18.95	1.05	3%+3.00		.15
Cable Splicers	20.70	1.05	3%+3.00		.15
Residnetial Construction	10.25	1.05			.05
ELEVATOR CONSTRUCTORS	19.97	.895	3%+.69	a	.03
ELEVATOR CONSTRUCTORS' HELPERS	13.98	.895	3%+.69	a	.03
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	9.985				
GLAZIERS:					
Area I	16.30	.70	1.00	1.00	
Areas II and III	17.04	.70	1.00		.10
IRONWORKERS:					
Bender Operator; Bridge; Fence Erector; Machinery Mover; Ornamental; Reinforcing; Sheeter; Structural	17.85	1.05	3.00		.30
LATHERS	16.71	.70	1.08		.04
LINE CONSTRUCTION:					
Groundmen	16.95	1.05	3%+3.00		.15
Equipment Operators; Linemen; Technicians	18.95	1.05	3%+3.00		.15
Cable Splicers	20.70	1.05	3%+3.00		.15
Powderman	16.95	1.05	3%+3.00		.15
MARBLE SETTERS; Terrazzo Workers	16.68	.90	2.25		.09
PAINTERS:					
Area I					
Zone I (within a 10 mile radius of the Fairbanks Post Office including Ft. Wainwright)					

PAINTERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 2 (Beyond 10 miles and up to 40 miles radius of the Fairbanks Post Office including Eielson Air Force Base and all the Sites within this territory)					
Zone 3 (Beyond 40 miles radius of the Fairbanks Post Office)					
Zone 1 and 3:					
Brush; Roller; Paper; Vinyl	$18.15	.70	$ 2.00		.10
Utilidor; Swing; Sign; Bosun	18.40	.70	2.00		.10
Structural Steel, Pot Tender, Sandblaster	18.65	.70	2.00		.10
Epoxy; Tar; Finish Metal Spray	19.15	.70	2.00		.10
Spray Painter	20.25	.70	2.00		.10
Tapers Hands	18.42	.70	2.00		.10
Tapers Machine	19.42	.70	2.00		.10
Buffer Operator	18.68	.70	2.00		.10
Hardwood Finishers	18.90	.70	2.00		.10
Zone 2:					
Brush, Roller, paper and vinyl Hangers	19.00	.70	2.00		.10
Utilidor, Swing, bosun, Sign	19.25	.70	2.00		.10
Structural steel, Pot tender-Sandblaster	19.35	.70	2.00		.10
Epoxy, Tar, Finish metal Spray	20.00	.70	2.00		.10
Spray Painter	21.10	.70	2.00		.10
Tapers, Hand	19.27	.70	2.00		.10
Tapers, Machine	20.27	.70	2.00		.10
Buffer Operators	19.53	.70	2.00		.10
Hardwood Operators	19.53	.70	2.00		.10
Zone 1, 2 and 3:					
Height Pay: All work on any Form of scaffolding or staging over 40 ft. will be paid $.25 more per hour and for every additional 20 ft. $.25 more per hour will be paid to the employee. The height of work shall be determined from the ground to the point of hook-up.					

PAINTERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREAS II and III:					
Brush, roller, sign	$18.00	$.70	$2.00		.20
Paper and vinyl, Swing stage, Taper/Drywall, Structural steel	18.40	.70	2.00		.20
Spray, sandblast, pot tender	18.60	.70	2.00		.20
Epoxy and Tar Applicator	19.00	.70	2.00		.20
Steeple Jack and Tower	19.80	.70	2.00		.20
Height Pay: All classifications, with the exception of steeple jacks and tower painters, a $.25 hourly premium shall be paid for swing stage work on a structure with height in excess of 40 ft. an additional $.25 per hourly height pay shall be paid for each additional 50 ft. thereafter. Height pay on all towers and steeplejack work shall start at the 150 ft. level. $.50 per hour above the scale shall be paid for each additional 100 ft.					
PLASTERERS	15.42	.70	2.28		.15
PLUMBERS; Steamfitters:					
Area I	18.77	.95	2.10		.45
Area II	18.65	.73	1.90		.15
Area III	16.50	1.00	1.70		.10
Residential Construction: Area I	14.32	.73	1.40		.15
ROOFERS:					
Area I	15.60	1.40	2.20		.05
Areas II and III	15.30	1.40	2.20		.05
SHEET FLOOR LAYERS:					
Area I	19.54	.68	1.33		.18
Areas II and III	19.43	.79	1.00		.21
SOFT FLOOR LAYERS:					
Area I	17.25	.90	2.00		.10
Areas II and III	16.04	.70	1.65		.15
SPRINKLER FITTERS	17.01	.65	.95		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SURVEY CREWS:					
Party Chief	$15.39	$1.01	$ 3.00		.05
Instrumentman	14.15	1.01	3.00		.05
Head Chainman	13.60	1.01	3.00		.05
Stakehop	13.60	1.01	3.00		.05
Rear Chainman	13.17	1.01	3.00		.05
TERRAZZO WORKERS' and TILE SETTERS' Helpers	12.83	.90	2.25		.09
TILE SETTERS	16.01	.90	2.45		.09
RIGGERS; WELDER: Receive rates for craft performing operation to which rigging or welding is incidental.					
PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.					
FOOTNOTE: a. Employer contributes 8% of the basic hourly rate for over 5 years' service and 6% of the basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit. Six Paid Holidays: A through F.					
LABORERS					
Group 1	$13.10	.60	$ 2.25		.09
Group 2	13.27	.60	2.25		.09
Group 3	13.31	.60	2.25		.09
Group 4	13.34	.60	2.25		.09
Group 5	13.38	.60	2.25		.09
Group 6	13.39	.60	2.25		.09
Group 7	13.44	.60	2.25		.09
Group 8	13.52	.60	2.25		.09
Group 9	13.77	.60	2.25		.09
Group 10	13.80	.60	2.25		.09
Group 11	13.88	.60	2.25		.09
Group 12	13.90	.60	2.25		.09
Group 13	13.91	.60	2.25		.09
Group 14	14.02	.60	2.25		.09
Group 15	14.14	.60	2.25		.09
Group 16	14.27	.60	2.25		.09
Group 17:					
Class A	13.10	.60	2.25		.09
Class B	13.29	.60	2.25		.09
Class C	13.60	.60	2.25		.09
Class D	14.16	.60	2.25		.09
Class E	14.31	.60	2.25		.09
Class F	14.55	.60	2.25		.09

LABORERS

Group 1: Building Laborers; Carpenters Tenders; Material Handlers and Hook Tenders; Form Strippers; Signalmen; Riggers; Sandblast Pot Tender; Saw Tenders; General Labor; Dump Man; Pit Man; Brush Cutters; Ditch Diggers; Monolithic Workers; Dryer Man; Window Cleaner; Utiliwalk and Utilidor

Group 2: Base and Floor Machine Man

Group 3: Choke Setters

Group 4: Concrete Labor including Vibratorman; Power Butty and Concrete Power Saw; Curb and Gutterman; General Crew (including Plant Crew) Asphalt

Group 5: Pneumatic or Power Tools

Group 6: Stake Hopper; Grademan; Steampoint or Water Jet Operator

Group 7: Tank Cleaner

Group 8: Jackhammer Operator and Pavement Breaker; Chuck Tender (Wagon and Air Track Drills)

Group 9: Mason Tender and Mud Mixers

Group 10: Gunnite Operator; Pipelayers; Culvert and Multiplate; High Scaler; Sloper (over 20 feet); Chain and Power Saws; Sack or bulk; Sewer Pipelayer; Sewer Caulkers; Timberman; All Monolithic Crews; Pipe Builders; Sandblasters

Group 11: Asphalt Rakers

Group 12: Tenders; Plasterers; Bricklayers; Cement Finisher; Burning and Cutting Torch (except intermittent torch work)

Group 13: Wagon Driller

Group 14: Timber Faller; Air Track Wagon Driller

Group 15: Chain Saw Filer

Group 16: High Riggers and Tree Topper; Powderman

Group 17: TUNNEL OR SHAFT
Class A: Topman and Bull Gang; Brakeman
Class B: Muckers; Laborers; Nippers
Class C: Chuck Tender
Class D: Retimberman
Class E: Miners, Shafts and Raises
Class F: Powderman

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$16.00	$1.10	$ 3.00		.15
Group 1-A	17.13	1.10	3.00		.15
Group 1-B	15.70	1.10	3.00		.15
Group 2	15.51	1.10	3.00		.15
Group 2-A	15.11	1.10	3.00		.15
Group 3	15.05	1.10	3.00		.15
Group 3-A	14.65	1.10	3.00		.15
Group 4	14.03	1.10	3.00		.15

Group 1: "A" Frame Trucks, Helicopters, Transporters, Deck Winches: dougle power drum; Back Filler; Batch Plant operator: batch and mixer over 200 yards per hour; Belcrete with power pack and similar conveyors; Bending Machine; Bulldozer, quad or HD 41 or similar; Cableways and Highlines, 3 yds. and under; Cleaning Machine; Coating Machine; Cranes: Shovels, Backhoes, Dragline, Clamshells (Crawler, truck type, rubber-tired, creter, floating (locomotive, whirley, eithr 3 yds. or under or 150' boom, including jibs and under, or 45 tons and under - Hydralifts or transporters, all track or truck type - Hyster cat cranes and attachments, sidebooms under 45 tons); Derricks; Ditching or Trenching Machine (16" or over); Drilling Machines, core, cable, rotary and exploration; Hydro Ax and similar; Loaders (Forklifts with power boom and swing attachment; Overhead and front end, 2½ yds. through 4 yds.; Loaders with forks or pipe clamps); Mechanics, Welders, bodyman; Mixers (mobile type with hoist combination); Motor Patrol Grader (over Model 14 or similar types); Mucking Machines (mole, tunnel drill and/or shield); Operator on Dredges; Piledriver Engineers, L. B. Foster, Puller or similar, paving breaker; Power Plant, turbine operator, 300 K.W. and over (power plants or combination of power units over 300 k.w. on highway or airfield construction or quarry operations); Sauerman-Bagley; Scrapers, Tournapulls, Caterpillar, Euclid and similar type equipment over 25 yds. through 40 yds.; Shot Blast Machine; Sub Grader (Gurries, C.M.I. and C.M.I. Roto mills and similar types); Tack Tractor; Truck mounted concrete pump; Wate Rote Machine; Hover Craft, flex craft, loadmaster, air cushion, terrain vehicle, helicopter transporter, cableways, Rollingon, dredge barge-cable, highline or cable car, camp maintenance engineer, boat coxswains

POWER EQUIPMENT OPERATORS (Cont'd)

Group 1-A: Cableways and Highlines, over 3 yds.; Cranes: shovels, backhoes, draglines, clamshells (crawler, truck type, floating locomotive, whirley, either over 3 yds. or over 150' boom, including jibs or over 45 tons; Tower cranes, Pecco, Lorain, Bucyrus and similar types; Hyster cat cranes and attachments, sidebooms 45 tons and over; Loaders over 4 yds.; Motor Patrol Grader (finish: when finishing to final grade, red, blue or similar hubs); Power Plants (1000 k.w. and over); Slip form paver, C.M.I. and similar types; Tournapulls, caterpillar, euclid scrapers and similar type equipment over 40 yds.

Group 1-B: Asphalt Roller; Bulldozers; Crushers; Finishing Machine Operator, concrete paving, sidewalk, curb and gutter machine; Loaders, elevating belt type, euclid and similar types; Motor Patrol grader 14 and under; Scrapers 25 yds. and under; Spreaders: Blaw Knox, Cedarapids, Barber Greene, Screed, Slurry Machine; Nodwell Sno Cat

Group 2: Batch Plant Operator: batch and mixer 200 yds. per hour and under; Cement Hogs and concrete pump operators; Compressors: Steel erection, including sand blasting, painting of same, piledriving; Conveyors (except as listed in group 1); Hoists on steel erection, Towermobiles and air tuggers; Loaders, elevating grader, dumor and similar; Locomotives: Rod and geared engines; Mixers Screening, washing plant; Sideboom (cradling rock drill); Skidder; Trenching Machine under 16"

Group 2-A: Service Oiler, Journeyman; Boiler-Fireman

Group 3: "A" Frame Trucks, Deck Winches; Single power drum; Bombardier (tack or tow rig); Boring Machine; Brooms, power Wayne, Saginaw and similar types; Bump Cutter (Concut, Christenson or similar types; Compressors: excavating; Farm Tractor; Forklift, industrial type; Gin Truck or winch truck with poles when used for hoisting; Hoists, air tuggers, elevators; Loaders (Elevating-Athey, Barber Greene and similar types; Forklifts or lumber carrier (on construction job sites); Forklifts with tower; Overhead and front end, under 2½ yds.); Locomotives: Dinkey (air, steam, gas and electric) speeders; Mechanics, light duty; Mixers: concrete mixers and batch, 200 yds. per hour and under; Oil, Blower Distributors; Pipeline Dream; Posthole diggers, mechanical; Pot Fireman (power agitated); Power Plant, turbine operator, under 300 k.w.; Pumps: Fuller Kenyon, Water; Rollers, Tampers, Vibrators, all except asphalt Saws, concrete; Straightening Machine; Tow Tractor;

Group 3-A: Grade Checker, Stake Hopper; Rig Oiler, over 45 ton, over 3 yards, or over 150' boom; Drill Helper

Group 4: Rig Oiler (Advances to Group 3-A if over 45 tons or 3 yards or 150' boom); Parts and Equipment Coordinator; Swamper (on trenching machines or shovel type equipment); Spotter; Steam Cleaner

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$14.06	$1.01	$ 3.00		.10
Group 2	14.12	1.01	3.00		.10
Group 3	13.59	1.01	3.00		.10
Group 4	14.44	1.01	3.00		.10
Group 5	14.84	1.01	3.00		.10
Group 6	15.15	1.01	3.00		.10
Group 7	15.44	1.01	3.00		.10
Group 8	15.75	1.01	3.00		.10
Group 9	16.06	1.01	3.00		.10
Group 10	16.37	1.01	3.00		.10
Group 11	16.88	1.01	3.00		.10
Group 12	16.99	1.01	3.00		.10
Group 13	17.29	1.01	3.00		.10
Group 14	14.58	1.01	3.00		.10
Group 15	13.31	1.01	3.00		.10
Group 16	13.74	1.01	3.00		.10
Group 17	14.42	1.01	3.00		.10
Group 18	14.68	1.01	3.00		.10
Group 19	14.95	1.01	3.00		.10
Group 20	15.22	1.01	3.00		.10
Group 21	15.39	1.01	3.00		.10
Group 22	14.36	1.01	3.00		.10
Group 23	13.48	1.01	3.00		.10

TRUCK DRIVERS

Group 1: Buggymobile; Hyster Operators (handling bulk aggregate), Lumber Carrier

Group 2: Semi or truck and trailer; Dumpsters; Batch Trucks over 5 yards; Dump Trucks, over 5 yards up to and including 10 yards; Fuel Truck; Greasers of Grease Trucks; Flat Beds, dual rear axle; Ready Mix: Over 3 yards up to and including 5 yards; Water Wagon, semi; Water wagon, dual axle Winch Trucks; Flat Bed including "A" Frame manufactures rating over 5 tons; Bull Lifts and Fork lifts over 5 tons; Front End Loader with Forks; Partsman and outside expeditor; Bus Operator, over 30 passengers, Track Truck Equipment; (All Terrain Vehicles, Form Distributor Truck, double axle; Loadmaster (air and water operations); Air cushion or similar type vehicle; Fire Trucks - double axle; Vacuum Truck; Vacuum Truck Sweepers - dual axle; Riggers; Combination Truck - fuel and grease; Greasers; Hydro Seeders-Dual Axle

Group 3: Batch Truck up to and including 5 yards; Dump Truck (including Rockbuggy and Trucks with pumps) up to and including 5 yards; Flat beds, single rear axle; Water wagon, single axlel Winch Truck, Flat bed including "A" Frame manufactured rating 5 tons and under; Bull Lifts and Fork lifts up to and including 5 tons; Bus Operator, up to 30 passengers; Form Distributor Truck, single axle, Hydro seeder, single axle, team drivers (horses, mules and similar equipment); Vacuum trucks and Truck Sweepers - single axle; Fire Trucks - single axle; Ambulance

Group 4: Dump Trucks over 10 yards up to and including 20 yards; Tire service Man; Lowbed heavy-duty Trailer; Oiler distributor drivers; Ready Mix: Compactor (when pulled by rubber-tired equipment); Lowboys including attached trailers and jeeps

Group 5: Dump Trucks over 20 yards up to and including 30 yards

Group 6: Dump Trucks over 30 yards up to and including 40 yards

Group 7: Dump Trucks over 40 yards up to and including 50 yards

Group 8: Dump trucks over 50 yards up to and including 60 yards

Group 9: Dump trucks over 60 yards up to and including 70 yards

Group 10: Dump Trucks over 70 yards up to and including 80 yards

Group 11: Dump Trucks over 80 yards up to and including 90 yards

TRUCK DRIVERS (Cont'd)

Group 12: Dump Trucks over 90 yards up to and including 100 yards

Group 13: Dump Trucks over 100 yards (above scales to be paid on actual water level measurements)

Group 14: Turn-O-Wagoner DW-10 when not self-loading

Group 15: Gravel Spreader Box Operator on Truck; Pickup (pilot Cats all light-duty vehicles); Warehouseman Class 2: Farm type rubber-tired tractor (material hauling or pulling wagons); Swampers

Group 16: Ready Mix: Up to and including 3 yards

Group 17: Ready Mix: Over 5 yards up to and including 7 yards

Group 18: Ready Mix: Over 7 yards up to and including 9 yards

Group 19: Ready Mix: Over 9 yards up to and including 12 yards

Group 20: Ready Mix: 13 yards and over

Group 21: Ready Mix, semi with double bowl mixer

Group 22: Water Wagon, when pulled by Euclid or similar type equipment

Group 23: Warehouse - Class 1

SUPERSEDEAS DECISION

STATE: Ohio COUNTY: Lucas
DECISION NO.: OH78-2168 DATE: Date of Publication
Supersedes Decision No.OH78-2147 dated November 13, 1978 in 43 FR 52656
DESCRIPTION OF WORK: Building and Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.13	.50	1.30		.04
BOILERMAKERS	13.575	1.075	1.00		.03
BRICKLAYERS; Marble Setters; & Stonemasons	12.425	1.06	1.30		.01
CARPENTERS; Millwrights; & Piledrivermen	12.99	1.06	.75		.05
CEMENT MASONS	14.14	.60			.02
ELECTRICIANS:					
Commercial	13.80	.65	3%+.55		.1%
Residential	7.59	.65	3%+.55		.1%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	12.355	.745	.56	a+b	.035
Helpers	70%JR	.745	.56	a+b	.035
Helpers (Prob.)	50%JR				
GLAZIERS	11.825	.55	1.00		.01
IRONWORKERS	12.86	1.06	1.22		.05
LATHERS	13.05	1.06	.10		.01
LINE CONSTRUCTION:					
Linemen	14.26	.50	3%	c	½%
Cable Splicers	14.51	.50	3%	c	½%
PAINTERS:					
Commercial:					
Brush; Drywall Tapers; Paperhangers	11.28	1.06	1.10		
Bridge; Railings; Powerhouse; Refinery Tanks	11.53	1.06	1.10		
Sandblasting; Spray; Pressure Cleaning	11.83	1.06	1.10		
Residential Work	10.14	1.06	1.10		
PLASTERERS	13.80	.60			.01
PLUMBERS; Steamfitters; Pipefitters	13.63	.80	.85		.09
ROOFERS	12.63	1.06	1.00		.02
SHEET METAL WORKERS	12.655	1.06	1.36		.045
SOFT FLOOR LAYERS:					
Commercial	11.32	1.06	.75		.04
Residential	10.30	1.06	.75		.04
SPRINKLER FITTERS	12.75	.75	1.05		.08
TERRAZZO WORKERS; Tile Setters	12.48	1.06	.50		
TERRAZZO WORKERS' FINISHERS; & Tile Setters' Finishers	11.00	1.06	.40	.50	

DECISION NO. OH78-2168

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

a. Seven paid holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled laborers	$10.86	.70	.70		.11
Mason Tenders	10.99	.70	.70		.11
Gunnite pot men; Mortar mixers	11.06	.70	.70		.11
Concrete pump nozzle men; All power driven tools; Power buggies	11.015	.70	.70		.11
Pipe layers; Bellmen; Bottom men for fire brick work only	11.115	.70	.70		.11
Nozzle operators for gunnite work	11.77	.70	.70		.11
Plasterers' Tenders	10.88	.70	.70		.11

DECISION NO. OH78-2168

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$12.89	.66	1.00		.11
GROUP B	12.73	.66	1.00		.11
GROUP C	12.38	.66	1.00		.11
GROUP D	11.57	.66	1.00		.11
GROUP E	11.24	.66	1.00		.11
GROUP F	9.28	.66	1.00		.11

GROUP A - A-frames; rotary drills used on caisson work for foundations and sub-structure work; boiler or compressor operator mounted on crain (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derricks (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls, helicopter operator and helicopter winch operator when hoisting builders materials; hoes (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with boom; panelboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.

GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; endloaders; Kohlman type loaders (dirt loading); lead greaseman; mucking machines; power grader; power scoops; power scrapers; push cat.

GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing well points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 24" and under.

GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.

GROUP E - Backfillers & tampers; batch plant; bar and joint installing machines; bullfloats; burlap and curing machines; clefplanes; concrete spreading mach.; crushers; deck hands; drum firemen (asphalt); farm type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over ½" discharge; hydro seeders; self-propelled power spreader; self-propelled sub-grader; tire repairmen; tractors pulling sheeps foot roller or grader; vibratory compactors (with integral power)

GROUP F - Oiler; helper; signalman; inboard & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure; pumps under 4" discharge' submersible pumps under 4" discharge.

SUPERSEDEAS DECISION

STATE: OHIO
COUNTY: FULTON
DECISION NO.: OH78-2169
DATE: Date of Publication
Supersedes Decision No. OH78-2147, dated November 13, 1978 in 43 FR 52656
DESCRIPTION OF WORK: Building Construction (Does not include family homes & garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.13	.50	1.30		.04
BOILERMAKERS	13.575	1.075	1.00		.03
BRICKLAYERS; Marble setters; Stonemasons:					
Twps. of Amboy, Swan Creek & Fulton	12.425	1.06	1.30		.01
Remainder of Co.	11.22	1.06	.50		
CARPENTERS; Millwrights; & Piledrivermen	12.99	1.06	.75		.05
CEMENT MASONS	14.14	.60			.02
ELECTRICIANS	13.80	.65	3%+.55		.1%
ELEVATOR CONSTRUCTORS	12.355	.745	.56	a&b	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	a&b	.035
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	11.825	.55	1.00		.01
IRONWORKERS	12.86	1.06	1.22		.05
LATHERS	13.05	1.06	.10		.01
LINE CONSTRUCTION:					
Linemen	14.26	.50	3%	c	2%
Cable splicers	14.51	.50	3%	c	2%
PAINTERS:					
Brush; Drywall tapers; & Paperhangers	11.28	1.06	1.10		
Bridge; Railings; Powerhouse; Refinery tanks	11.53	1.06	1.10		
Sandblasting; Spray; Pressure Cleaning	11.83	1.06	1.10		
PLASTERERS	13.80	.60			.01
PLUMBERS; Steamfitters; & Pipefitters	13.63	.80	.85		.09
ROOFERS	12.63	1.06	1.00		.02
SHEET METAL WORKERS	12.655	1.06	1.36		.045
SOFT FLOOR LAYERS	11.32	1.06	.75		.04
SPRINKLER FITTERS	12.75	.75	1.05		.08
TERRAZZO WORKERS; & Tile setters	12.48	1.06	.50		
TERRAZZO WORKERS' FINISHERS; & Tile setters' finishers	11.00	1.06	.40	.50	

DECISION NO. OH78-2169

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

a. Seven paid holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

	Basic Hourly Rates Bldg.	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled laborers	$9.27	.70	.70		.10
Mason tenders; Gunite pot men	9.39	.70	.70		.10
All power driven tools & buggies; burners; Torchmen; Nozzlemen for concrete pump	9.42	.70	.70		.10
Plasterers' tenders	9.445	.70	.70		.10
Nozzle operators for gunite work	9.92	.70	.70		.10
Bellmen; Bottom men; Brick expeditor	9.505	.70	.70		.10

DECISION NO. 01178-2169

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$12.89	.66	1.00		.11
GROUP B	12.73	.66	1.00		.11
GROUP C	12.38	.66	1.00		.11
GROUP D	11.57	.66	1.00		.11
GROUP E	11.24	.66	1.00		.11
GROUP F	9.28	.66	1.00		.11

GROUP A - A-frames; rotary drills used on caisson work for foundations and sub-structure work; boiler or compressor operator mounted on crain (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derricks (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls, helicopter operator and helicopter winch operator when hoisting builders materials; hoes (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with boom; panelboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.

GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; endloaders; Kohlman type loaders (dirt loading); lead greaseman; mucking machines; power grader; power scoops; power scrapers; push cat.

GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing well points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 24" and under.

GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.

GROUP E - Backfillers & tampers; batch plant; bar and joint installing machines; bullfloats; burlap and curing machines; clefplanes; concrete spreading mach.; crushers; deck hands; drum firemen (asphalt); farm type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over ½" discharge; hydro seeders; self-propelled power spreader; self-propelled sub-grader; tire repairmen; tractors pulling sheeps foot roller or grader; vibratory compactors (with integral power)

GROUP F - Oiler; helper; signalman; inboard & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure; pumps under 4" discharge' submersible pumps under 4" discharge.

SUPERSEDEAS DECISION

STATE: Washington COUNTIES: Statewide
DECISION NUMBER: WA78-5133 DATE : Date of Publication
Supersedes Decision No. WA78-5105 dated June 30, 1978, in 43 FR 28734
DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments, up to and including 4 stories), heavy and highway construction and dredging.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Okanogan, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom and Yakima Counties	$ 14.27	.62	$ 1.30		.03
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties	14.27	.60	1.30		.14
Remaining Counties	13.54	.62	1.30		.04
BOILERMAKERS	12.76	1.075	1.00	1.00	.03
BRICKLAYERS:					
Adams (except City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, Grand Coulee Dam Area in Okanogan County and Whitman Counties	11.94	.80	.70		.05
Benton, Franklin and Walla Walla Counties	11.81	.65	.70		
Chelan, Douglas and Okanogan (except area of Grand Coulee Dam)	9.50	.55	.50		
Clallam, Island, Jefferson, King, Kitsap, Snohomish and Skagit (south of the Cities of Burlington, Sedro-Woolley and Concrete) Counties	12.41	.80	1.15		.11
Clark, Cowlitz, Pacific (Southern portion), Skamania, Wahkiakum Counties and ten mile strip bordering the Columbia River in Klickitat County	12.94	.85	.85		.15
Grant County and the portion of Adams County including the City of Othello	12.50	.40			
Kittitas, Yakima and Klickitat (except a ten mile strip bordering the Columbia River) Counties	12.25	.75	1.00		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS: (Cont'd)					
Grays Harbor, Lewis, Mason, Northern portion of Pacific, Pierce and Thurston Counties	$ 12.37	.80	$ 1.20		.06
San Juan, Skagit (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof), and Whatcom Counties	12.82	.80	.85		
CARPENTERS:					
All Counties and parts of Counties east of the 120th Meridian (except those parts of Kittitas, Klickitat and Yakima east of the 120th Meridian)					
Carpenters	11.59	.78	.85		.075
Piledriver; Floor Sanders; Saw Filers; Stationary Power Woodworking Tool Operator	11.74	.78	.85		.075
Boom Men; Carpenters (creosoted material)	11.84	.78	.85		.075
Piledriver (creosoted material)	11.99	.78	.85		.075
Millwrights & Machine Erectors	12.09	.78	.85		.075
All Counties and parts of Counties west of the 120th Meridian except Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties					
Carpenters and Drywall Applicators	11.88	.60	.80		.02
Carpenters on Creosoted material	11.98	.60	.80		.02
Sawfilers; Stationary power saw; Floor finisher; Floor layer; Shingles; Floor sander and other stationary power woodworking tools	12.01	.60	.80		.02
Millwrights & Machine Erectors	12.38	.60	.80		.02
Piledrivers; Bridge, dock and wharf builders	12.03	.60	.80		.02
Acoustical Workers	12.04	.60	.80		.02
Boommen	12.08	.60	.80		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties					
Carpenters; Form Strippers; Manhole Builders; Acoustical Applicators, Drywall Applicators	$ 11.28	.60	.95	.50	.04
Piledrivermen, bridge, dock and wharf builders	11.38	.60	.95	.50	.04
Floor Layers; Floor finishers; Stationary Power saw operator	11.43	.60	.95	.50	.04
Boommen	11.48	.60	.95	.50	.04
Millwrights; Machine Erectors	11.53	.60	.95	.50	.04

CEMENT MASONS

Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas (except for western portion lying one mile west of the City of Easton), Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties

	ZONE A	ZONE B	ZONE C	ZONE D	ZONE E
Cement Masons	$10.93	$11.58	$11.83	$12.28	$12.73
Power Troweling Machine Gunnite Operator	11.08	11.73	11.98	12.43	12.88
Power Tool Operator (grinding, bushing or toxic material)	11.38	12.03	12.28	12.73	13.18

FRINGE BENEFITS: H&W $.75 Pen. $1.00 App. Tr. $.05

*SEE Page following TRUCK DRIVERS for ZONE DEFINITIONS.

CEMENT MASONS:					
Clallam, Grays Harbor, Jefferson, King, Kitsap, Kittitas (western portion lying one mile west of the City of Easton), Lewis, Mason, Pacific (Northern portion), Pierce and Thurston Cos.					
Cement Masons	11.53	.70	1.00	.50	.02
Composition, Color, Mastic, Trowel Machine; Grinder, Power Tool, Gunnite Nozzleman	11.78	.70	1.00	.50	.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS: (Cont'd)					
Island, Skagit, Snohomish and Whatcom Counties					
Cement Masons	$ 11.95	.94	.70		.09
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman	12.20	.94	.70		.09
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties					
Cement Masons	11.00	.85	.76	.60	.10
Composition materials and power machinery	11.15	.85	.76	.60	.10
ELECTRICIANS:					
Adams, Ferry, Lincoln, Pend Oreille, Spokane, stevens and Whitman Counties					
Electricians	14.62	.83	3%+.40		.02
Cable Splicers	15.02	.83	3%+.40		.02
Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla and Yakima Cos.					
Electricians	14.27	.83	3%+1.00		.02
Cable Splicers	15.09	.83	3%+1.00		.02
Chelan, Douglas, Grant and Okanogan Counties					
Electricians	13.92	.83	3%+1.00		.02
Cable Splicers	15.31	.83	3%+1.00		.02
Clallam, Jefferson, King and Kitsap Counties					
Electricians	15.08	.85	3%+1.10		.05
Cable Splicers	16.58	.85	3%+1.10		.05
Clark, Klickitat and Skamania Counties					
Electricians	14.55	.90	3%+1.00		.05
Cable Splicers	15.30	.90	3%+1.00		.05
Cowlitz and Wahkiakum Counties					
Electricians	14.30	.90	3%	5%	.02
Cable Splicers	15.73	.90	3%	5%	.02
Grays Harbor, Lewis, Mason, Pierce, Pacific & Thurston Cos.					
Electricians	13.86	.88	3%+.85	8%	.07
Cable Splicers	15.25	.88	3%+.85	8%	.07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Island, San Juan, Skagit, Snohomish and Whatcom Counties					
Electricians	$ 15.77	.90	3%+.40		.04
Cable Splicers	17.35	.90	3%+.40		.04
ELECTRONIC TECHNICIANS:					
(Installation and repair of low-voltage communication and alarm systems, excluding any work under the jurisdiction of a journeyman wireman):					
Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties					
Journeyman Installer	7.30	.43			.02
ELEVATOR CONSTRUCTORS:					
Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla and Whitman Counties	12.965	.745	.35	4%+a	.02
Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom and Yakima Counties	14.41	.895	.69	a	.02
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Cos.	13.405	.895	.56	a	.025
GLAZIERS:					
Adams (northeastern portion), Lincoln eastern half); Pend Oreille, Spokane and Stevens Counties	11.20	.35	.30	b+.43	
Adams (southeastern portion), Benton, Columbia, Franklin and Walla Walla Counties	10.77	.40	.55	.66	
Adams (Southwestern corner), Chelan, Douglas, Grant, Lincoln, (western half) and Okanogan Cos.	8.25	.40	.70	.59	.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS: (Cont'd)					
Asotin, Garfield and Whitman Cos.	$ 10.33	.40	.55	b	
Clallam, Island, Jefferson, Grays Harbor, King, Kitsap, Lewis, Mason, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston and Whatcom Counties	11.19	.34	.85	b	
Yakima and Kittitas Counties	10.11	.35	.70		
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Cos.	11.41	.61	.65		.01
INSULATION APPLICATORS:					
King County	8.25	.55	.70		.02
IRONWORKERS:					
Statewide except Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties					
Reinforcing; Structural; Fence Erectors; Ornamental; Riggers and Signalmen	12.60	.93	1.45		.10
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Cos.					
Reinforcing; Structural; Fence Erectors; Ornamental; Riggers; Signalmen	12.60	.93	1.45		.10
LATHERS:					
Adams, Asotin, Benton, Chelan, Columbia, Ferry, Franklin, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties	9.95	.70	.85		
Clallam, Island, Jefferson, King, Kitsap, Lewis, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish and Whatcom Counties	11.72	.80	1.00		.04
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Cos.	11.05	.60	1.00		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS:					
Adams (except that portion including the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens and Whitman Counties, and Grand Coulee Dam Area in Okanogan County	$ 11.94	.80	.70		.05
Benton, Franklin and Walla Walla Counties	11.81	.65	.70		
Chelan, Douglas and Okanogan Counties (except area of Grand Coulee Dam)	9.50	.55	.50		
Clallam, Island, Jefferson, King, Kitsap, Snohomish and Skagit (south of the Cities of Burlington, Sedro-Woolley and Concrete) Counties	12.41	.80	1.15		.11
Clark, Cowlitz, Pacific (Southern portion), Skamania, Wahkiakum Counties and a ten mile strip bordering the Columbia River in Klickitat County	11.83	.75	.85		.15
Grant County and that portion of Adams County including the City of Othello	10.50	.40			
Grays Harbor, Lewis, Mason, Northern half of Pacific, Pierce and Thurston Cos.	12.37	.80	1.20		.06
San Juan, Skagit (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof) and Whatcom Counties	12.82	.80	.85		
MARBLE, TILE and TERRAZZO WORKERS HELPERS:					
All Counties west of the Cascade Mountain Range (except Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties	9.52	.65	.30		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MASON TENDERS:					
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties (including tenders of plasterers, bricklayers, tile setters, marble setters and terrazzo workers; topping for cement finishers and mortar mixers)	$ 10.03	.95	$ 1.10		.10
PAINTERS:					
Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties					
Brush	11.22	.40	.90		.02
Steel; Spray; Steam Cleaning; Roller over 9" or 10' handle; Drywall Taper	11.47	.40	.90		.02
Swing Srage work or high rate (over 30')	11.57	.40	.90		.02
Bitumastic; Sandblasting; Bridge; Tanks on legs; Tower; Stacks; Steeples	11.62	.40	.90		.02
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties					
Brush	10.82	.55	.70	.50	.10
Spray	11.22	.55	.70	.50	.10
Bridges, High work over 50' (brush)	11.57	.55	.70	.50	.10
Bridges, High work over 50' (spray)	11.97	.55	.70	.50	.10
Drywall Finishers	10.65	.65	.60	.50	.06
Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, Pacific (Northern portion) and Whatcom Counties					
Brush; Roller; Drywall Tapers, Paperhangers	10.53	.60	.70		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Spray; Structural Steel; Bridge Sandblasting; Stacks; Steam Cleaning; Steeples; Swing Stage; Tanks on legs; Toxic Material	$ 10.77	.60	.70		.04
Tower Painters	10.88	.60	.70		.04
Statewide except Wahkiakum, Cowlitz and Skamania Counties					
Striper	12.47	.61	.33		
PLASTERERS:					
Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties	10.73	.75	1.00		
Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific (Northern portion), Pierce, San Juan, Skagit, Snohomish, Thurston and Whatcom Counties	11.72	.70	1.10		.08
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties	11.05	.60	1.00		.01
PLASTERERS' TENDERS:					
All Counties and portions of Counties East of the 129th Meridian	9.35	.82	.70		.05
PLUMBERS:					
Chelan, Clallam, King, Kittitas (North of 47°15' N. Lat.), Douglas (west of the 119°30' W. Long.), Jefferson and Okanogan (except the area lying east of 119°30 W. Long., North to 48°30' W. Long., North lines) Counties	13.90	.89	1.51	1.25	.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS: (Cont'd)					
Adams (except area between a line drawn south from the western boundary of Ferry County to Highway #10 eastward to Whitman County), Asotin, Benton, Columbia, Franklin, Garfield, Grant, Klickitat, Walla Walla, Yakima, Douglas (east of 119°30' W. Long.), Ferry (west of a line drawn from Creston in Lincoln County northward to the Canadian Border), Kittitas (south of 47° 15' N. Lat.), Lincoln (west of a line drawn from Schrag in Adams County northward to the Ferry County Line), and Okanogan (east of 119°30' W. Long. and south of 48°30' N. Lat.) Counties	$ 13.27	.75	$ 1.55	$2.00	.11
Adams (area between a line drawn south from the western boundary of Ferry County to Highway #10 and eastward to Whitman County), Asotin, Cowlitz, Ferry (east of a line drawn from Creston in Lincoln County northward to the Canadian Border), Grays Harbor, Kitsap, Lewis, Lincoln (east of a line drawn from Schrag in Adams County northward to the Ferry County Line), Mason, Pend Oreille, Pierce, Skagit, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Whatcom, Whitman and Clark and Skamania (those portions lying north of an east-west line drawn through Woodland eastward to the Klickitat County Line, Counties	13.94	.85	1.26	1.25	.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS: (Cont'd)					
Clark and Skamania Counties south of an east-west line drawn through Woodland eastward to the Klickitat County Line	$ 14.32	$ 1.50	$ 1.60		.13
ROOFERS:					
Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla and Whitman Counties	10.39	.65	1.00		.02
Benton, Franklin, Kittitas, Jlickitat and Yakima Counties Roofers; Kettlemen; Water-proofers; Shinglers; Spraying	11.59	.60	.30		
Clallam, Jefferson, King, Kitsap, Mason and Snohomish Counties Roofers, Waterproofers	11.78	.65	.80		.03
Slate and Tile Roofers	12.03	.65	.80		.03
Cowlitz, Grays Harbor, Lewis, Pacific, Pierce, Thurston and Wahakiakum Counties Roofers; Waterproofers	11.31	.65	1.00		.02
Salte and Tile Roofers	11.56	.65	1.00		.02
Island, San Juan, Skagit and Whatcom Counties Roofers and Waterproofers	9.82	.55	.40		
Slate and Tile Roofers	10.32	.55	.40		
Clark and Skamania Counties Roofers	11.05	.70	1.00		
Handling of irritating material (coal, tar or epoxy)	11.30	.70	1.00		
Handling of irritating material (coal, tar or epoxy) in confined area	11.55	.70	1.00		
SHEET METAL WORKERS:					
Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties	13.88	3%+.68	1.14		.14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS: (Cont'd)					
Clallam, Jefferson, Kitsap and Mason Counties	$ 12.24	3%+.37	.82	$1.50	.03
Clark and Skamania Counties	11.14	3%+.81	.93	1.00	.04
Cowlitz, Grays Harbor, Lewis, Pacific, Pierce, Thurston and Wahkiakum Counties	13.01	3%+.63	1.01		.02
King, Kittitas, Island and Snohomish Counties	14.23	3%+.68	1.32		.06
Whatcon, Skagit and San Juan Cos.	12.53	3%+.61	.83		.04
SOFT FLOOR LAYERS:					
Adams (N.E. portion), Ferry, Lincoln (E.½), Pend Oreille, Spokane and Stevens Counties	10.52	.40	.60		
Adams (S.E. portion), Benton, Columbia, Franklin and Walla Walla Counties	10.66	.40	.90	1.21	
Adams (S.W. portion), Chelan, Douglas, Grant, Lincoln (western ½), and Okanogan Counties	11.00	.40	.90	.60	
Asotin, Garfield and Whitman Cos.	9.93	.40	.75		
King and Snohomish Counties	11.14	.63	1.00		.05
Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties	10.435	.50	1.05	c	.08
Grays Harbor, Mason, Pacific (Northern portion), Pierce and Thurston Counties	9.91	.56	1.00		.05
Yakima and Kittitas Counties	10.62	.40	.35		
Island, Skagit and Whatcom Cos.	9.94	.56	1.00		.05
Malheur County	7.26	.49	.10		.10
SPRINKLER FITTERS:					
Skagit, Snohomish, King, Island, Kitsap, Pierce and Thurston Cos.	15.31	.75	1.55		.11
Remaining Counties	11.65	.65	.95		.08
TERRAZZO WORKERS:					
Adams (except that portion including the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, Whitman and Grand Coulee Dam area in Okanogan County	11.45	.80	.70		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS: (Cont'd)					
Benton, Franklin and Walla Walla Counties	$ 11.14	.65	.70		
Chelan, Douglas, Okanogan (except area of Grand Coulee Dam)	9.50	.55	.50		
Clallam, Island, Jefferson, King, Kitsap, Skagit (south of the Cities of Burlington, Sedro-Woolley and Concrete) and Snohomish Counties	12.12	.80	1.00		.05
San Juan, Skagit (including Cities of Burlington, Sedro-Woolley, Concrete and north thereof) and Whatcom Counties	12.82	.80	.85		
Grant County and that portion of Adams County including the City of Othello	10.50	.40			
Grays Harbor, Lewis, Mason, Pierce and Thurston Counties	13.37	.80	1.20		.06
TILE SETTERS:					
Adams (except that portion including the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevebs, Whitman and Grand Coulee Dam area in Okaogan County	11.45	.80	.70		
Benton, Franklin and Walla Walla Counties	11.14	.65	.70		
Chelan, Douglas, Okanogan (except area of Grand Coulee Dam)	9.50	.55	.50		
Clallam, Island, Jefferson, King, Kitsap, Skagit (south of the Cities of Burlington, Sedro-Woolley and Concrete) and Snohomish Counties	12.12	.80	1.00		.05
Clark, Cowlitz, Pacific (Southern portion), Skamania, Wahkiakum and a ten-mile strip bordering the Columbia River in Klickitat County	10.44	.70	.75		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS: (Cont'd)					
Grant County and that portion of Adams County including the City of Othello	$ 10.50	.40			
Grays Harbor, Lewis, Mason, Pierce and Thurston Counties	12.37	.80	1.20		.06
San Juan, Skagit (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof) and Whatcom Counties	12.82	.80	.85		

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidential.

*Where Pacific County is stated as "Northern Portion" or "Southern Portion" such areas are defined as follows:

Pacific (Northern portion) - North of Wahkiakum County Northern Boundary extended due West to the Pacific Ocean

Pacific (Southern portion) - South of Wahkiakum County Northern Boundary extended due West to the Pacific Ocean.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

b. Two weeks' vacation with pay after 1 year employment. also seven Paid Holidays: A through F plus Washington's Birthday.

c. 4% of all gross wages to be placed to the credit of the employee with less than one year's service - 6% of all gross wages to be placed to the credit of the employee with more than one year of service.

LINE CONSTRUCTION

	BASE ZONE	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Cable Splicer, Leadman Pole Sprayer	$ 13.29	$14.54	$ 15.29	$16.04	$ 17.29
Lineman, Pole Sprayer Heavy Line Equipment Man, Cerfitied Lineman Welder	12.00	13.25	14.00	14.75	16.00
Tree Trimmer	10.84	12.09	12.84	13.59	14.84
Line Equipment Man	10.34	11.59	12.34	13.09	14.34
Head Groundman (chipper), Head Groundman, Powderman, Jackhammer Man	9.04	10.29	11.04	11.79	13.04
Groundman, Tree Trimmer Helper	8.50	9.75	10.50	11.25	12.50

FRINGE BENEFITS: H&W $.45 PEN 3% VAC $.10 APP. TR. 1/2%

BASE ZONE - 0 to 3 miles from geographical center of Cities listed below.

ZONE 1 - 3 to 20 miles radius

ZONE 2 - 20 to 35 miles radius

ZONE 3 - 35 to 50 miles radius

ZONE 4 - Over 50 miles radius

BASE ZONE Rate is paid when working out of employer's permanent shop.

Spokane	Ellensburg	Astoria	Medford	Corvallis
Tacoma	Ephrata	Baker	Portland	Coeur D' Alene
Walla Walla	Everett	Burns	Pendleton	Kellog
Wenatchee	Kennewick	Bend	Salem	Lewiston
Yakima	Longview	Eugene	Roseburg	Orofino
Wilbur	Olympia	Seattle	Lakeview	The Dalles
Klamath Falls	Bellingham	Umatilla	Sand Point	

LABORERS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian

GROUP NO.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$ 9.45	$10.10	$ 10.35	$10.80	$ 11.25
2	9.70	10.35	10.60	11.05	11.50
3	9.95	10.60	10.85	11.30	11.75
4	10.20	10.85	11.10	11.55	12.00
5A	10.15	10.80	11.05	11.50	11.95
5B	10.20	10.85	11.10	11.55	12.00
5C	10.60	11.25	11.50	11.95	12.40
5D	10.65	11.30	11.55	12.00	12.45
FRINGE BENEFITS:					
Health and Welfare	$ .82				
Pensions	.90				
Apprenticeship Training	.05				

NOTE: See ZONE DEFINTIONS Following TRUCK DRIVERS Classifications
For Building Construction use Base Rates (ZONE A)
Zone rates apply to Heavy and Highway Construction ONLY

LABORERS (AREA 2) (All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.92	.95	$ 1.10		.08
Group 2	10.26	.95	1.10		.08
Group 3	10.40	.95	1.10		.08
Group 4	10.50	.95	1.10		.08

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LABORERS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian

GROUP NO.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$ 9.45	$10.10	$ 10.35	$10.80	$ 11.25
2	9.70	10.35	10.60	11.05	11.50
3	9.95	10.60	10.85	11.30	11.75
4	10.20	10.85	11.10	11.55	12.00
5A	10.15	10.80	11.05	11.50	11.95
5B	10.20	10.85	11.10	11.55	12.00
5C	10.60	11.25	11.50	11.95	12.40
5D	10.65	11.30	11.55	12.00	12.45
FRINGE BENEFITS:					
Health and Welfare	$ .82				
Pensions	.90				
Apprenticeship Training	.05				

NOTE: See ZONE DEFINTIONS Following TRUCK DRIVERS Classifications
For Building Construction use Base Rates (ZONE A)
Zone rates apply to Heavy and Highway Construction ONLY

LABORERS (AREA 2) (All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.92	.95	$ 1.10		.08
Group 2	10.26	.95	1.10		.08
Group 3	10.40	.95	1.10		.08
Group 4	10.50	.95	1.10		.08

LABORERS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian

Group 1: Brush Hog Feeder; Concrete Crewman (to include: stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, signaling, handling the nozzle of squeezecrete or similar machine - 6 inches and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: guard rail, guide and reference posts, sign posts, and right-of-way markers); Flagman; General Laborer; Grout Machine Header Tender; Nipper; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Tractor Laborer (Railroad); Truck Loader; Well-point Man; Window Cleaner

Group 2: Asphalt Raker; Asphalt Roller, walking; Carpenter Tender; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Helper (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: squeeze and flow-crete nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Helper; Power Buggy Operator; Power Tool Operator, gas, electric, pnuematic; Railroad Equipment, power driven, except dual mobile power spiker or puller; Railroad Power Spiker of Puller, dual mobile; Rodder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar tampers, and pavement breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven

Group 3: Air Track Drill; Brush Machine (to include: horizontal construction joint clean-up brush machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: grade checkers and Elevation control); Monitor Operator track or similar mounting); Mortar Mixer; Nozzleman (to include: jet blasting Nozzleman, over 1,200 lbs., jet blast machine, power propelled, sandblast nozzle); Pipelayer (to include: working topman, caulker, collarman, jointer, mortarman, rigger, jacker, shorer, valve or meter installer); Pipewrapper; Vibrator, 4 inches and over

Group 4: Drills with dual Masts; Powderman; Welder, electric, manual or automatic

Group 5: Tunnel and Shaft, free air
Class A: Bull Gang, Pump Crete Crewman including distribution pipe, Assembling and dismantle and Nipper
Class B: Brakeman, Dumpman
Class C: Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels
Class D: Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts

LABORERS (AREA 2)
All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County

Group 1: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burners; Car and Truck Loader; Carpenter Helper; Cement Handler; Changehouse or Dry Shack; Chocker Setter; Clean up Laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crush Feeder; Curing Laborer; Demolition, wrecking and moving; Ditch Digger; Drierman; Dumpman; Elevator Feeders; Epoxy Technician; Faller and Bucker, hand; Fence Laborer; Fine Graders; Flagman; Form Setter; Grout Machine Header Tender; Header Laborer and Guardrail Erector; House Wrecker; Landscaping or Planting; Material Yard Man (including electrical); Nipper-swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signalman; Skipman; Sloper Sprayman; Stockpiler; Toolroom Man (at job site); Track Laborer; Truck Spotter; Window Cleaner

Group 2: Air, gas or electric Vibrating Screed; Anchor Machine; Ballast Regulator Machine; Chippers; Chocker Splicer; Chuck Tender; Clary Power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including post tension beams; Jackhammer; Multiple Tampers; Pavement Breaker; Pipe Pot Tender; Pipe Wrapper; Powderman Helper; Power Jacks; Power Wheelbarrow or Buggy; Railroad Spike Puller; Ribbon Setter, head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Swinging Scaffold or Boatswain Chair over water or 25 ft. in height; Tamper, multiple and self-propelled; Tamper and similar electric and air operator tools; Topman-tailman; Track Liners; Vibrator; Wagon Driller and Air Trac Helper Well Point Laborer

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Helper; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scaler; Laser Beam Operator; Manhole Builder; Mortarman and Hodcarrier; Nozzleman (concrete and rock, sandblast, gunnite, shotcrete); Water Blaster; Pipelayer and Caulker; Powderman; Raker, asphalt; Spreader (carries grade with rodder); Timberman, sewer; Tugger Operator; Vibrator, 4" and over; Wagon Driller and Air Trac Operator

Group 4: Caisson Worker; Laser Beam Operator (tunnel); Powderman; Re-timberman

LABORERS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group No.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$8.93	$ 9.33	$ 9.68	$ 9.93	$10.18	$ 10.43
2	9.28	9.68	10.03	10.28	10.53	10.78
3	9.58	9.98	10.33	10.58	10.83	11.08
4	9.83	10.23	10.58	10.83	11.08	11.33

FRINGE BENEFITS:

Health and Welfare	$ .95
Pension	1.10
Vacation	.65
Apprenticeship Training	.10

NOTE: See ZONE DEFINITIONS Following TRUCK DRIVERS Classifications

LABORERS (AREA 4) (Those portions of Chelan, Douglas, Kittitas, Okanogan and Yakima Counties lying West of the 120th Meridian)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.82	.95	$ 1.10		.08
Group 2	10.16	.95	1.10		.08
Group 3	10.30	.95	1.10		.08
Group 4	10.40	.95	1.10		.08

LABORERS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving laborers; Drillers Helpers; Dumpers, road oiling crew; Dumpman (for grading crew); Elevator Feeders; Fence Builder (including guard rail, median rail, reference post, guide post, right-of-way marker); Fine Graders; Form Strippers (not swinging stages); Landscaping or Planting Laborers; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Helper; Pittsburgh Chipper Operator or similar types Railroad Track Laborers; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipmen; Slopers Spraymen; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bull Gang (above ground); Weight Man - Crusher (aggregate when used)

Group 2: Applicator (including pot tender for same) Applying protective Material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary, Power Spreader and similar types: Clean-up Nozzleman-Greencutter (concrete, rock, etc.); Concrete Power Buggyman; Crusher Feeder; Demolition and Wrecking charred materials; Grade Checker; Gunite Nozzleman Tender; Gunite and Sand Blasting Post Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers, Ribbon Setter, head, rip Rap Man (head hand place, Sand Blasting (wet), Stake Setter, Tunnel-Muckers, Brakemen, Concrete Crew, Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators, Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted Drills, and other similar typed; Concrete Saw Operator; Gunite Nozzleman; High Scalers, Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying) - Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzlemsn; Sandblasting (dry); Sewer Pipe Layers; Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks; Tugger Operator; Tunnel Chuck Tenders; Nippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powderman

LABORERS (Area 4)
Those portions of Chelan, Douglas, Kittitas, Okanogan and Yakima Counties lying West of the 120th Meridian

Group 1: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burners; Car and Truck Loader; Carpenter Helper; Cement Handler; Changehouse or Dry Shack; Chocker Setter; Clean-up laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crush Feeder; Curing Laborer; Demolition, wrecking and moving; Ditch Digger; Drierman; Dumpman; Elevator Feeders; Epoxy Technician; Faller and Bucker, hand; Fence Laborers; Fine Graders; Flagman; Form Setter; Grout Machine Header Tender; Header Laborer and Guardrail Erector; House Wrecker; Landscaping or Planting; Material Yard Man (including electrical); Nipper-Swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signlaman; Skipman; Sloper Sprayman; Stockpiler; Toolroom Man (at job site); Track Laborer; Truck Spotter; Window Cleaner

Group 2: Air, gas or electric Vibrating Screed; Anchor Machine; Ballast Regulator Machine; Chippers; Chocker Splicer; Chuck Tender; Clary Power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including Post Tension Beams; Jackhammer; Multiple Tampers; Pavement Breaker; Pipe Pot Tender; Pipe Wrapper; Powderman Helper; Power Jacks; Power Wheelbarrow or Buggy; Railroad Spike Puller; Ribbon Setter, head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Swinging Scaffold or Boatswain Chain rover water or 25 ft. in height; Tamper, multiple and self-propelled; Tamper and similar electric and air operated tools; Topman-tailman; Track Liners; Vibrator; Wagon Driller and Air Trac Helper; Well Point Laborer

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Helper; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scaler; Laser Beam Operator; Manhole Builder; Mortarman and Hod Carrier; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on concrete and rock, sandblast, gunnite, shotcrete) water blaster; Pipelayer and Caulker; Powderman; Raker, asph alt; Spreader (carries grade with rooder); Timberman, sewer; Tugger Operator; Vibrator, 4" and over; Wagon Driller and Air Trac Operator

Group 4: Caisson Worker; Laser Beam Operator (tunnel); Powderman; Re-timber Man

POWER EQUIPMENT OPERATORS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian

Group No.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$ 9.80	$10.45	$ 10.70	$11.15	$ 11.60
2	10.10	10.75	11.00	11.45	11.90
3	10.65	11.30	11.55	12.00	12.45
4	10.80	11.45	11.70	12.15	12.60
5	10.95	11.60	11.85	12.30	12.75
6	11.20	11.85	12.10	12.55	13.00
7	11.45	12.10	12.35	12.80	13.25
FRINGE BENEFITS:					
Health and Welfare	$ .90				
Pension	1.40				
Apprenticeship Training	.03				

Group 1: Bit Grinders; Bolth Threading Machine; Compressors, under 2,000 cu. ft. per minute gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Driller's Helper; Fireman and Heater Tender; Grade Checker; Helper (mechanic or welder, H.D.); Oiler; Oiler and Cable Tender, mucking machine; Pumpman; Rollers, all types on subgrade (farm type, case, John Deer and similar - or compacting or vibrator) except when pulled by dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator, Fireman or Pugmixer Operator, single unit (concrete); Belt Finishing Machine; Bending Machine (pipeline); Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more - gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker; Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loader (bucker, elevator and conveyors); Longitudinal Float; Mixer Operator; Post Hole Auger or Punch; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator (self-propelled); Railroad Power Tamper Jack Operator (self-propelled); Spray Curing Machine (concrete); Spreader Jack Operator (self-propelled); Straddle Buggy (Ross and similar on construction job site); Tractor (farm type R/T with attachments except backhoe); Tugger Operator; Ditch Witch or similar

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)
All Counties and portions of Counties East of the 120th Meridian

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland & similar); Beltcrete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Blade Operator (motor patrol and attachments); Boat Operators; Boom Cats (sde); Boring Machine (rock under 8" bit)(Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (pipeline); Concrete Pumps (Squeeze-crete, Flow-crete, Pumpcrete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Elevating Belt-type Loader (Euclid, Barber Green or similar); Elevating Grader-type Loader (Dumor, Adams or similar); Equipment Serviceman, greaser and oiler; Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Hoist (2 or more drums or tower hoist); Loader (Overhead and Front-end under 4 yds., R/T); Locomotive Engineer; Mixermobile; Mucking Machines; Paver or Curb Extruder (concrete and asphalt); Pump (grout or jet); Rollerman (finishing pavement); Rubber-tired Scraper (one motor with one scraper, under 40 yds.); Screed Operator, Soil Stabilizer (P&H or similar); Spreader Machine; Tractor (Crawler, inlcuding Dozer, Scraper, Drills, Boom, Rollers, etc.); Traverse Finishing Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead Operator; Vacuum Drill (reverse circulation drill, under 8"); Chain Person

Group 4: H.D. Mechanic; H.D. Welder; Refrigeration Plant Engineer (under 1,000 tons); Rubber-tired Scraper, multi-engine power, with one scraper (Euclid, TS-24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yds. and over); Surface Heater and Planer Machines; Turnhead (with re-screening)

Group 5: Asphalt Plant Operator; Automatic Subgrader (ditches and trimmers) (Auto-grade, ABC, R.R. Hansen and similar on grade wire); Backhoes (under 3 yds.); Batch and Wet Mix Operator - multiple units (2 and including 4); Blade (under 3 yds.); Concrete Slip Form Paver; Cranes (under 65 tons, sideboom over 24 ft., butt pin to CTR Sheave); Crusher, Grizzle and Screening Plant Operators; Drilling Equipment (8' bit and over)(Robbins' reverse circulation and similar); Loader Operator (front end and overhead 4 yds. to 8 yds.); Pile Driving Engineers; Paver (dual drum); Quad-track or similar equipment; Railroad Track Liner Operator (self-propelled); Rubber-tired Scrapers, Multi-engine, power with one scraper (Euclid, TS-24 and similar); Push Pull or Help Mate in use; Rubber-tired Scrapers, multiple engines with 2 scrapers; Shovels (under 3 yds.); Refrigeration Plant Engineer (1,000 tons and over); Signalmen (Whirleys, Highline Hammerheads or similar); Trenching Machines (7 ft. depth and over); Multiple Dozer units with single blade; Instrument Man

Group 6: Backhoes (3 yds. and over); Batch Plant (over 4 units); Cableway Controller-Dispatcher; Cableway Operator; Clamshell Operator (3 yds. and over); Cranes, all-65 tons and over; Derricks and Stifflegs (65 tons and over); Dragline (3 yds. and over); Elevating Belt (Holland type); Loader 360 degrees revolving Koehring Scooper or similar); Loaders (overhead and front-end over 8 to 12 yds.); Rubber-tired Scrapers (multiple engine with 3 or more scrapers); Shovels (3 yds. and over); Tower Crane; Whirleys and Haammerheads (all)

Group 7: Helicopter Pilot; Loaders (overhead and front-end - over 12 yds.); Party Chief

POWER EQUIPMENT OPERATORS (Area 2) (All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 12.10	.85	$ 1.00		.11
Group 2	12.20	.85	1.00		.11
Group 3	12.31	.85	1.00		.11
Group 4	12.36	.85	1.00		.11
Group 5	12.38	.85	1.00		.11
Group 6	12.43	.85	1.00		.11
Group 7	12.44	.85	1.00		.11
Group 8	12.45	.85	1.00		.11
Group 9	12.48	.85	1.00		.11
Group 10	12.50	.85	1.00		.11
Group 11	12.63	.85	1.00		.11
Group 12	12.66	.85	1.00		.11
Group 13	12.69	.85	1.00		.11
Group 14	12.76	.85	1.00		.11
Group 15	12.78	.85	1.00		.11
Group 16	12.79	.85	1.00		.11
Group 17	12.81	.85	1.00		.11
Group 18	12.84	.85	1.00		.11
Group 19	12.88	.85	1.00		.11
Group 20	12.95	.85	1.00		.11
Group 21	12.96	.85	1.00		.11
Group 22	13.01	.85	1.00		.11
Group 23	13.06	.85	1.00		.11
Group 24	13.28	.85	1.00		.11
Group 25	13.32	.85	1.00		.11
Group 26	13.37	.85	1.00		.11
Group 27	13.45	.85	1.00		.11
Group 28	13.67	.85	1.00		.11
Group 29	13.87	.85	1.00		.11
Group 30	13.98	.85	1.00		.11
Group 31	14.00	.85	1.00		.11
Group 32	14.28	.85	1.00		.11

POWER EQUIPMENT OPERATORS (Area 2)
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area3) and including the Northern portion of Pacific County

Group 1: Mechanics' Helpers (heavy duty)

Group 2: Oilers, grade-oiler combination and/or brakeman

Group 3: Firemen; Firemen (drier and hot plant)

Group 4: Rollers, Tampers and Vibrators (other than plant, road mix or multi-lift materials); Tractor (farmall type, 60 h.p. and under); Compressor (excavating and general purposes)

Group 5: Oiler Driver on Truck Cranes (over 45 tons up to 100)

Group 6: Blower Distributors and Mulch Seeding Operator; Oil Distributors

Group 7: Locomotive (Dinkey-air, diesel, electric, gas, steam)

Group 8: Cement Hogs

Group 9: Equipment Service and fueling oiler; Oiler Driver on Truck Cranes (100 tons and over)

Group 10: Pump (water); Tractors (Farmall type, over 60 h.p.)

Group 11: Post Hole Diggers (mechanical)

Group 12: Brooms, power (Wayne, Saginaw and similar types); Bulldozers (under D9 or similar); Loaders (Fork Lifts, Lumber Stacker on construction job site, Drott Travel Lift); Rollers, Tampers and Vibrators (twin engine); Saw (concrete); Scrapers (carry-all type, single)

Group 13: Batch Plant Operator (batch and mixer, 200 yards per hour and under); Cranes ("A" Frame Tru cks, single power drum); Conveyors; Crusher (rock) washing and screening plants; Finishing Machine Operator, Concrete Paving; Hoists, Air Tuggers, Strato Tower Bucket, Elevators and Deck Winches (power); Loaders (Elevating-Athey, Barber Greene and similar types, Overhead and Frontend, under 2½ yards); Mixers (asphalt up to 4 tons per batch, concrete mixer and batch - 200 yards per hour and under); Power Plant Operators; Pumps (Fuller Kenyon, Concrete and Pumpcrete); Rollers, Tampers and Vibrators (on plant, road mix or multi-lift materials); Screed Man; Spreaders (Blaw Knox, Cedarapids, Jaeger, Flarrety or similar types); Trenching Machine (under 16 in.)

POWER EQUIPMENT OPERATORS (AREA 2) (Cont'd)
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County

Group 14: Motor Patrol Graders (including Model 14 and similar); Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment (25 yards and under)

Group 15: Compressor (steel erection or tank erection including sandblasting, painting of the same); Hoists on steel erection, Air Tuggers and Towermobiles; Loaders (fork lifts with tower)

Group 16: Mechanics or Welder (heavy duty)

Group 17: Loaders (Elevating Grader type, Dumor and similar); Mixers (paving); Scraper (carryall type, double)

Group 18: Tractors (farmall type, used as Backhoes, Rubber-tired Ford, Ferguson, Case and similar type 60 h.p. and under)

Group 19: Bull Dozer (D-9 or similar)

Group 20: Trenching Machines (16 inches and over)

Group 21: Bump Cutter (Concut, Christianson or similar types)

Group 22: Batch Plant (batch and mixer, over 200 yards per hour through 400 yards per hour); Conveyors (Beltcrete with power pack and similar types); Loaders (elevating belt type - Euclid and similar types); Mixer (asphalt, 4 tons and over per batch, concrete mixers and batch - over 200 yards per hour through 400 yards per hour, and paving dual)

Group 23: Bulldozer engaged in Yo Yo Operation (while clearing and scaling); Cableways (3 yards and under); Cranes ("A" Frame Trucks, double power drum: and Crawler, truck type, floating, Locomotive, Whirley, either 3 yards and under, or 150' of boom including jibs and under, or 45 tons and under; Hydralifts, Hyster Cat Cranes and attachments; Chipper, wood with boom attachment); Derricks, all; Drilling Machine (Core, Cable Rotary and Exploration); Loader (fork lift with power boom and swing attachment; Overhead and front end, 2½ yards and up to 4 yards); Mixers (mobile type with hoist combination; Motor Patrol Graders over Model 14 and similar; Mucking Machines (Mole, Tunnel Drill, and/or Shield); Paydozer and Linked Pusher (Quad-9 and similar); Piledriver Engineer (L. B. Foster Puller or similar, Paving Breaker); Shovels (Crawler and truck types, all attachments, 3 yards and under); Sub Grader (Curries, CMI and similar types); Tractors (Farmall type, used as Backhoes, Rubber-tired - Ford, Ferguson, Case and similar types - over 60 h.p.); Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment over 25 yards through 40 yards

POWER EQUIPMENT OPERATORS (AREA 2) (Cont'd)
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County

Group 24: Loaders (overhead and front end, 4 yards up to 8 yards)

Group 25: Concrete Mixers and batch over 400 yards per hour through 600 yards per hour

Group 26: Tournapulls, Caterpillar, Euclid, Scrapers and similar type (over 40 yards through 55 yards)

Group 27: Cableways (over 3 yards); Crane (Crawler, truck type, floating, Locomotive, Whirley, either over 3 yards, or over 150' of boom including jibs or over 45 tons up to 100 tons: and, Tower Cranes, Peco, Lorraine, Bucyrus and similar types); Helicopter Winch Operator; Remote Control Operator on Rubber-tired Earth Moving Equipment; Shovels (Crawler and truck type, all attachments, over 3 yards up to 6 yards); Slip Form Paver (Zimmerman, CMI and similar types)

Group 28: Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment (over 55 yards through 70 yards)

Group 29: Loaders (overhead and front end 8 yards and over)

Group 30: Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment (over 70 yards through 85 yards)

Group 31: Cranes (Crawler, Truck type, floating, Locomotive, Whirley, either 6 yards and over, 200' of boom including jibs and over, or 100 tons and over); Shovel (Crawler and Truck type, all attachments, 6 yards and over)

Group 32: Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment (over 85 yards through 100 yards)

POWER EQUIPMENT OPERATORS (Area 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum, and the Southern portion of Pacific, Counties

Group No.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$10.40	$10.80	$11.15	$11.40	$11.65	$11.90
2	10.54	10.94	11.29	11.54	11.79	12.04
3	10.64	11.04	11.39	11.64	11.89	12.14
4	10.80	11.20	11.55	11.80	12.05	12.30
5	10.82	11.22	11.57	11.82	12.07	12.32
6	10.90	11.30	11.65	11.90	12.15	12.40
7	10.96	11.36	11.71	11.96	12.21	12.46
8	11.06	11.46	11.81	12.06	12.31	12.56
9	11.12	11.52	11.87	12.12	12.37	12.62
10	11.18	11.58	11.93	12.18	12.43	12.68
11	11.20	11.60	11.95	12.20	12.45	12.70
12	11.26	11.66	12.01	12.26	12.51	12.76
13	11.34	11.74	12.09	12.34	12.59	12.84
14	11.50	11.90	12.25	12.50	12.75	13.00
15	11.66	12.06	12.41	12.66	12.91	13.16
16	11.84	12.24	12.59	12.84	13.09	13.34
17	11.98	12.38	12.73	12.98	13.23	13.48
18	12.16	12.56	12.91	13.16	13.41	13.66
19	12.30	12.70	13.05	13.30	13.55	13.80

FRINGE BENEFITS:

Health and Welfare	$1.00	Vacation	$.50
Pension	1.21	Apprenticeship Tr	.05

*SEE ZONE DESCRIPTION - following Truck Drivers classifications.

POWER EQUIPMENT OPERATORS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 1: Oiler, including Plant, Crane, Crusher, Guradrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler-driver, 25 ton capacity or over; Crane Fireman, (all equipment except floating); A-frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Helper; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrial Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Helper; Welder's Helper; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Asphalt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 2,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy phones, etc.; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Service Oiler (greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Locomotive, under 40 tons; Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Pactor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulvamixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. Flywheel and under; Trenching Machine, Maximum digging capacity 3 ft. depth

POWER EQUIPMENT OPERATORS (AREA 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concrete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2½ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting Machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without front end attachments 2½ cu. yds. and under (Ford, John Deere, Case type); Elevating Grader, Tractor towed requiring operator or grader; Pot Rammer; Ballast Regulator; Ballast Tamper, Multiple-purpose; Track Liner; Tie Spacer; Shuttle Car; Locomotive, 40 tons and over

Group 8: Diesel-Electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yd.; Loader, front end and overhead, 2½ cu. yds. and under 4 cu. yds.; Hammer operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (bit grinder); H.D. Mechanic and Welder; Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Combination H.D. Mechanic-Welder, with dispatched and/or when required to do both; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller-Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu. yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

POWER EQUIPMENT OPERATORS (Area 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the portion of Pacific, Counties

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine, Single Scraper, with Push-pull attachments, self-loader, Paddle Wheel, Auger type; Blade mounted Spreaders, Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 50 tons; Piledriver Operator; Floating Clamshell, etc. under 3 cu. yds.; Floating Crane (derrick barge), less than 30 ton; Elevating Grader, operated by tractor operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator, Locomotive Crane, Gantry and Overhead

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, Auger type, Finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (derrick barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, Multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu. yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley over 80 ton and including 150 ton; Floating Crane (derrick barge) 80 ton less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in conjunction with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane 250 ton and over; Remote Controlled Earth Moving Equipment; Underwater equipment, remote or otherwise

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (DREDGING) (Area 1) (All Counties and portions of Counties East of the 120th Meridian)					
Group 1	$12.02	.85	$ 1.00		.11
Group 2	12.12	.85	1.00		.11
Group 3	12.46	.85	1.00		.11
Group 4	12.51	.85	1.00		.11
Group 5	12.56	.85	1.00		.11
Group 6	12.88	.85	1.00		.11
Group 7:					
(a)	13.27	.85	1.00		.11
(b)	13.82	.85	1.00		.11
DREDGING (Area 2) (All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County)					
Group 1	12.02	.85	1.00		.11
Group 2	12.12	.85	1.00		.11
Group 3	12.46	.85	1.00		.11
Group 4	12.51	.85	1.00		.11
Group 5	12.56	.85	1.00		.11
Group 6	12.88	.85	1.00		.11
Group 7:					
(a)	13.27	.85	1.00		.11
(b)	13.82	.85	1.00		.11
DREDGING (Area 3) (Clark, Cowlitz, Klickitat, Pacific (Southern portion), Skamania and Wahkiakum Counties)					
Group 1	11.14	1.00	1.00	.50	.05
Group 1A	11.80	1.00	1.00	.50	.05
Group 2	10.78	1.00	1.00	.50	.05
Group 3	10.54	1.00	1.00	.50	.05
Group 4	10.28	1.00	1.00	.50	.05

POWER EQUIPMENT OPERATORS (Areas 1 and 2)
(DREDGING)

Group 1: Assistant Mate (deckhand)

Group 2: Fireman; Oiler

Group 3: Assistant Engineer (Electric, Diesel, Steam or Booster pump); Mates and Boatmen

Group 4: Engineer Welder; Craneman

Group 5: Assistant Engineer (Electric Generator Operator for primary pump, power barge or dredge)

Group 6: Leverman, Hydraulic

Group 7: Leverman, Dipper:
(a) 5 yards and under
(b) Over 5 yards

POWER EQUIPMENT OPERATORS (Area 3)
(DREDGING)

Group 1: Leverman, Hydraulic

Group 1A: Leverman, Dipper

Group 2: Assistant Engineer (including Watch Engineer, Welder, Mechanic, and Machinist) and Mate

Group 3: Tenderman (Boatman, Attending Dredge Plant); Fireman

TRUCK DRIVERS (Area 1)
All Counties and portions of Counties East of the 120th Meridian

GROUP NO.	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$ 10.98	$11.63	$11.88	$12.33	$12.78
2	11.02	11.67	11.92	12.37	12.82
3	11.08	11.73	11.98	12.43	12.88
4	11.17	11.82	12.07	12.52	12.97
5	11.38	12.03	12.28	12.73	13.18
6	11.42	12.07	12.32	12.77	13.22
7	11.48	12.13	12.38	12.83	13.28
8	11.52	12.17	12.42	12.87	13.32
9	11.63	12.28	12.53	12.98	13.42
10	11.67	12.32	12.57	13.02	13.47
11	11.98	12.63	12.88	13.33	13.78
12	12.12	12.77	13.02	13.47	13.92
13	12.28	12.93	13.18	13.63	14.08
14	12.42	13.07	13.32	13.77	14.22
FRINGE BENEFITS:					
Health & Welfare	$1.07				
Pensions	.80				

NOTE: See ZONE DEFINITIONS following TRUCK DRIVERS Classifications

Group 1: Flat Bed Truck, single rear axle; Escort Driver; Fork Lift, 3,000 pounds and under; Fuel Truck Driver (Steam Cleaner and Washer); Helper and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck 1,800 gallons.

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1; Warehouseperson

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Semi-trailer, Low Bed, Truck and Trailer; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yards and under); Trucks, side, end, and bottom dump (under 6 yards); Water Tank Truck (1,801 - 4,000 gallons)

Group 4: Auto Crane - 2,000 pounds capacity; Bulk Cement Spreader; Dumptor (56 yards and under); Flaherty Spreader, Box Driver; Flat Bed Truck (using power take off); Fork Lift (over 3,000 pounds); Oil Distributor Driver (road, bootperson, leverperson helper); Rubber-tired tunnel jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks hauling concrete (over 3 yards to 6 yards); Water Tank Truck (4,001 - 6,000 gallons); Wrecker and Tow Trucks

TRUCK DRIVERS (AREA 1) (Cont'd)
All Counties and portions of Counties East of the 120th Meridian

Group 5: Low Boy (under 50 tons); Service Greaser; Tireperson No. 2; Truck, side, end, and bottom dump (over 6 yards to 12 yards)

Group 6: A-Frame (Swedish Crane, Iowa 3,000, Hydrolift); Water Tank Truck (6,001 - 8,000 gallons)

Group 7: Dumptor (over 6 yards); Transit Mixers and Trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards)

Group 8: Low Boy (over 50 tons); Water Tank Truck (8,001 - 10,000 gallons); Tractor with Steer Trailer

Group 9: Transit Mixers and Trucks hauling concrete (10 yards to 15 yards); Trucks, side, end and bottom dump (over 20 yards including 30 yards); Water Tank Truck (10,001 - 12,000 gallons)

Group 10: Mechanic, Field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, which is greater; Transit Mixers and Trucks hauling concrete (15 yards to 20 yards); Trucks, side, end and bottom dump (over 30 yards to 40 yards); Water Tank Truck (12,001 - 14,000 gallons)

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yards); Trucks, side, end and bottom dump (over 40 yards to 50 yards)

Group 13: Truck, side, end and bottom dumps (over 50 yards to 100 yards)

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end and bottom dump (over 100 yards)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (Area 2) (All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and all of Kittitas and Yakima Counties)					
Group 1	$12.28	.94	.75		.09
Group 2	12.33	.94	.75		.09
Group 3	12.38	.94	.75		.09
Group 4	12.39	.94	.75		.09
Group 5	12.55	.94	.75		.09
Group 6	12.59	.94	.75		.09
Group 7	12.60	.94	.75		.09
Group 8	12.66	.94	.75		.09
Group 9	12.71	.94	.75		.09
Group 10	12.73	.94	.75		.09
Group 11	12.76	.94	.75		.09
Group 12	12.86	.94	.75		.09
Group 13	12.88	.94	.75		.09
Group 14	12.92	.94	.75		.09
Group 15	13.04	.94	.75		.09
Group 16	13.08	.94	.75		.09
Group 17	13.20	.94	.75		.09
Group 18	13.25	.94	.75		.09
Group 19	13.41	.94	.75		.09
Group 20	13.57	.94	.75		.09
Group 21	13.73	.94	.75		.09

TRUCK DRIVERS (Area 2)

All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

Group 1: Leverman and Loaders at bunkers and batch plants; Pickup Truck, Escort or Pilot Car; Swampers; Warehouseman and Checkers

Group 2: Team Drivers

Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site, warehousing; Dumpsters, and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobra, LeTourneau, Westinghouse, Athey Wagon, Euclid, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks - side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yards; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreader, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Truck (up to 1,600 gallons); Winch Truck, single rear axle; Wrecker, tow truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Ross, Hyster, and similar equipment); Water Wagon and Tank Truck, 1,600 gallons to 3,000 gallons)

Group 6: Transit-mix, 0 to and including 41 yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yards to and including 12 yards; Explosive Truck (field mix) and similar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

Group 9: Bulk Cement Tanker; Dumpsters and similar equipment (as listed in Group 3) - over 16 yards to and including 20 yards; Water Wagon and Tank Truck, over 3,000 gallons

TRUCK DRIVERS (Area 2) (Cont'd)

All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4½ yards to and including 6 yards

Group 12: "A" Frame or Hydralift Trucks or similar equipment

Group 13: Dumpsters and similar equipment (as listed in Group 3) - over 20 yards to and including 30 yards; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yards, to and including 8 yards

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yards to and including 40 yards; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yards to and including 10 yards

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yards to and including 55 yards

Group 18: Transit-mix, over 10 yards to and including 12 yards

Group 19: Transit-mix, over 12 yards to and including 16 yards

Group 20: Transit-mix, over 16 yards to and including 20 yards

Group 21: Transit-mix, over 20 yards

TRUCK DRIVERS (Area 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern Portion of Pacific, Counties

Group No.	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
1	$10.29	$10.69	$11.04	$11.29	$11.54	$11.79
2	10.34	10.74	11.09	11.34	11.59	11.84
3	10.39	10.79	11.14	11.39	11.64	11.89
4	10.44	10.84	11.19	11.44	11.69	11.94
5	10.49	10.89	11.24	11.49	11.74	11.99
6	10.59	10.99	11.34	11.59	11.84	12.09
7	10.69	11.09	11.44	11.69	11.94	12.19
8	10.79	11.19	11.54	11.79	12.04	12.29
9	10.89	11.29	11.64	11.89	12.14	12.39
10	11.06	11.46	11.81	12.06	12.31	12.56
11	11.16	11.56	11.91	12.16	12.41	12.66
12	11.26	11.66	12.01	12.26	12.51	12.76
13	11.36	11.76	12.11	12.36	12.61	12.86
14	11.46	11.86	12.21	12.46	12.71	12.96

FRINGE BENEFITS:

Health & Welfare	$ .68
Pension	.70
Vacation	.88
Apprenticeship Training	.05

*SEE ZONE DESCRIPTION - following Truck Driver Classifications.

TRUCK DRIVERS (Area 3)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump Trucks, side, end and bottom dumps, including Semi-trucks and Trains or combinations thereof: 6 cu. yds. and under, Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on concrete dry batch plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Helper; Truck Mechanic Helper; Warehouseman (warehouse parts, tool men and parts chaser, checkers and receivers); Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame of Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

Group 3: Dump Trucks, side, end and bottom dumps, including Semi-trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and wet or dry mix trucks: 5 cu. yds. and under; Tireman (full-time basis); Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers of doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Straddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters of similar equipment, all sizes; Transit Mix and wet or dry trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and wet or dry mix truck, over7 cu. yds. and including 9 cu. yds.; Truck Mechanic-Welder - Body Repairman; Water Wagons (rated capacity 5000 to 7000 gallons

TRUCK DRIVERS (Area 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, Wahkiakum and the Southern portion of Pacific, Counties

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and wet or dry mix trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity), over 7000 gallons to 10,000 gallons

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinatins thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and wet or dry mix trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagons (rated capacity), over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combination thereof: over 40 cu. yds. and including 50 cu. yds.; Transit Mix and wet or dry mix trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

Drivers and Helpers (handling sacked cement - add $.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

ZONE WAGE SCALE (AREA 1)

Cement Masons

Travel Zone Centers:
Moses Lake Wenatchee Pasco Yakima Spokane
*Coeur d'Alene *Walla Walla Lewiston

Laborers (Heavy and Highway)
Power Equipment Operators
TRUCK DRIVERS

Travel Zone Centers:
Moses Lake Pasco Spokane Lewiston
*Coeur d'Alene *Walla Walla

*15 mile free Zone

Zone A - Within a 15 mile radius from the center of the above named Cities
Zone B - 15-30 miles radius from the center of the above named Cities
Zone C - 30-45 miles radius from the center of the above named Cities
Zone D - 45-90 miles radius from the center of the above named Cities
Zone E - Over 90 miles radius from the center of the above named Cities

ZONE WAGE SCALE (AREA 3) ONLY

LABORERS
Goldendale, Longview and Vancouver

POWER EQUIPMENT OPERATORS
Astoria, Goldendale, Hood River, Longview
The Dalles and Vancouver

TRUCK DRIVERS
Astoria, Goldendale, Longview, the Dalles and Vancouver

ZONE A: All jobs or projects located within 10 miles of the respective City Hall

ZONE B: More than 10 miles but less than 25 miles from the City Hall

ZONE C: More than 25 miles but less than 35 miles from the respective City Hall

ZONE D: More than 35 miles but less than 45 miles from the City Hall

ZONE E: More than 45 miles but less than 75 miles from the respective City Hall

ZONE F: More than 75 miles from the respective City Hall

[FR Doc. 78-36121 Filed 12-28-78; 8:45 am]

federal register

FRIDAY, DECEMBER 29, 1978

PART VI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Proposed Eligibility Requirements, Contract Rights and Obligations

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 250]

[Docket No. R-78-597]

COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Proposed Eligibility Requirements, Contract Rights and Obligations

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

ACTION: Proposed rule.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner (the Commissioner) proposes to revise Part 250, which sets forth the eligibility requirements and contract rights and obligations with respect to the multifamily coinsurance program, so as to correct certain errors included in previously published regulations, simplify program operations, and increase the potential for coinsurance usage.

DATE: Comments due January 29, 1979.

ADDRESS: Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-7603.

FOR FURTHER INFORMATION CONTACT:

Thomas W. White, Acting Director, Office of State Agency and Bond Financed Housing, (202) 755-5945

SUPPLEMENTARY INFORMATION: On September 29, 1976 at 41 FR 43068, the Department published a final rule which added to 24 CFR a new part, Part 250, which established a multifamily coinsurance program for state housing finance agencies, under the authority of Section 244 of the National Housing Act (12 USC 1715 Z9). This was added by Section 307 of the Housing and Community Development Act of 1974 (PL 93-383). In summary, Section 244 authorizes the Secretary to insure and make a commitment to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provisions, pursuant to a coinsurance contract providing that the agency will (1) assume a portion of any loss on the transaction, and (2) carry out, subject to audit, exception or review requirements, such credit approval, appraisal, inspection, commitment, property disposition, or other function as the Secretary approves.

During the period from publication of the above cited final rule to the present, no mortage insurance has actually been written under this program, although several of the state agencies have expressed an interest in seeking approval to process cases under coinsurance. Under the circumstances, the Department proposes to revise the program as set forth below. The proposed revision addresses three major objectives: (1) modifying the program to increase its usefulness to state housing finance agencies; (2) simplifying the provisions and deleting unessential materials; and (3) correcting inadvertent errors. The major differences between the present program and the proposed program are also described below, with the citations in each case referring to the proposed regulations unless otherwise indicated. The revised regulations are presented in their entirety.

The key changes the Department is proposing from the present regulations are the following: (1) Elimination of the deductible and portfolio insurance concept; (2) substitution of a sliding scale of coinsurance risk sharing ratio and premium for the single fixed low-sharing relationship; (3) requirement for a demonstrable capacity by the agency to meet its share of the risk; (4) limitation of the coinsurance provisions to new construction and substantial rehabilitation projects insured pursuant to Sections 221 (d)(3) and (d)(4); (5) deletion of the requirement that at least 20 percent of the units under the coinsurance program be assisted under the Section 8 Housing Assistance Payments Program, however, most agencies are required to finance housing for low and moderate income families and the majority of the units will be Section 8 and this deletion is being proposed to increase the flexibility available to the agency; and (6) a requirement for a performance review whereby not fewer than the first five loans submitted by each agency will be carefully reviewed by the Department before a commitment is issued.

(1) Approved agency—Section 250.3. The proposed provision gives the Department flexibility in determining the administrative level that will be involved in case processing. This flexibility departs from the present provision which places all coinsurance case processing at the central office.

(2) Eligible projects—Section 250.10. This section that requires a specified portion of occupants of a project be low income has been deleted. This deletion reflects the facts that Sections 221(d)(3) and 221(d)(4) do not have any income restrictions. We expect that the principal beneficiaries of this coinsurance program will be low and moderate income families.

(3) Certification as an approved agency—Section 250.202. The requirement that an agency be approved as a HUD mortgagee prior to being certified by HUD as eligible to underwrite coinsured mortgages has been added. Also, Section 250.202(b) establishes a new requirement that the agency demonstrate that it will have access to resources to meet its share of liabilities or losses under the coinsurance program.

(4) Withdrawal of approval—Section 250.204. Since the agency, pursuant to item 3, is to be an approved mortgagee, the standard causes for withdrawal of mortgagee approval have been added to this section. Further, Section 250.204(d) provides that certification as an approved agency may be withdrawn if an agency transfers a coinsured mortgage to any party without the advance approval of the Commissioner.

(5) Application fees, inspection fees, and service charges—Section 250.302. A restriction has been inserted limiting the total amount chargeable to the mortgagor to the maximum amount chargeable under the related full insurance program, i.e., Section 221(d)(3) or 221(d)(4).

(6) Processing and commitment—Section 250.305(b). This additional provision emphasizes that, although all applications for insurance commitments must be submitted to the Commissioner for commitment issuance, not fewer than the first 5 commitments for endorsement submitted by each agency will be carefully reviewed by the Commissioner before a commitment is issued.

(7) Covenant for hazard insurance—Section 250.314. The proposed provision requires somewhat more comprehensive coverage than does the existing provision.

(8) Supervision applicable to all mortgagors—Section 250.323(e)(5). This provision has been added to require that each agency submit a quarterly report to the Commissioner on any troubled projects and pertinent remedial actions.

(9) Commercial and community facilities—Section 250.332(a). The previous 10 percent of net rentable area limitation has been deleted, and the pertinent provisions applicable to the Section 221 (d)(3) and (d)(4) full insurance programs have been substituted in its place.

(10) Maximum mortgage amounts—Section 250.402. All of the pertinent provisions have been revised, thereby allowing maximum mortgage amounts under coinsurance which are identical to those prevailing under the Section 221 (d)(3) and (d)(4) full insurance programs. Under existing coinsurance

regulations for either new construction or rehabilitation, all sponsors are limited to loans equaling 90 percent of replacement cost or value, notwithstanding the fact that nonprofit or cooperative sponsors under the (d)(3) full insurance program are eligible for 100 percent loans, although all other (d)(3) sponsors and all (d)(4) sponsors are limited to 90 percent loans under both coinsurance and full insurance. The Department believes that nonprofit and cooperative sponsors should receive the same treatment under coinsurance as under full insurance, and accordingly proposes to allow them to receive 100 percent loans under coinsurance pursuant to Section 221(d)(3). It is believed that, in the event reductions in Departmental risk exposure are determined to be necessary, such reductions should be addressed by those provisions dealing with the proportion of loss payable by the Department as insurance benefits, and by the provisions establishing the premiums to be collected by HUD to compensate for coinsurance loss, rather than by reducing loan-to-value ratios below those allowed under the full insurance programs. Conforming amendments have also been made to Sections 250.333(a)(3), 250.342, 250.343 (b) and (c), and 250.403(c) (1)(ii) and (2)(ii) of the regulations under this part.

(11) Mortgages insured pursuant to Section 223(f)—Sections 250.410 through 250.417. These provisions of the existing regulations have been omitted from the proposed version of the program. The primary objective of the coinsurance program is to facilitate construction and rehabilitation of multifamily projects by the agencies, and this objective can be realized by using coinsurance pursuant to the provisions of the two pertinent full insurance programs, Section 221 (d)(3) and (d)(4). Deleting the Section 223(f) existing properties option results in a considerable simplification and shortening of the regulations. In any event, the Section 223(f) full insurance program will continue to be made available to agencies which seek insurance on mortgages covering the acquisition or refinancing of existing properties.

(12) Requirements applicable to mortgages insured under Section 236—Subpart E. This deletion of currently existing Sections 250.501 through 250.516 reflects the current lack of availability of contract authority under Section 236.

(13) Creation of contract of coinsurance—Section 250.703. The revised provisions have undergone substantial simplification. The proposed program establishes a separate contract for each coinsured mortgage on an individual basis, thereby incorporating the processing structure applicable to the full insurance programs.

(14) Interest reduction payments contract—Section 250.704. This section deletes the existing regulations since they apply to the Section 236 program.

(15) Amount of MIP to be collected from the mortgagor—Section 250.705. This section, which originally required an initial and annual premium payment of 0.4 percent of the outstanding principal balance, has been substantially revised. The 0.4 percent factor was based on an 80 percent—20 percent sharing of the residual loss on a defaulted mortgage by HUD and the lender, respectively, after the lender had absorbed a certain portion of the total loss as an initial deductible. Under the proposed program there are neither portfolios nor deductibles; each mortgage is treated as a discrete entity. Also, a single fixed loss-sharing relationship is not required, but rather, a range of coinsurance participation levels is made available, accompanied by a corresponding sliding scale of premium rates. The premium charged by HUD is, to the maximum practical extent, directly proportional to the share of the risk borne by the Department. Therefore, under the revised structure, the mortgagee would be free to choose its own extent of exposure, provided the statutory minimum of 10 percent were met. The annual premium payment to HUD would range from 0.5 percent to 0.25 percent of the principal balance depending upon the degree of coinsurance.

(16) Pro rata payment of annual MIP—Section 250.712. The proposed program excludes this provision, thereby further simplifying the program structure and reducing administrative costs. The individual premium amount, payable in advance each year, is intended to cover any subsequent period, not to exceed one year, during which the mortgage is insured by the Commissioner.

(17) Application for insurance benefits—Section 733. These provisions are excluded from the proposed program, since the latter, now significantly simplified, does not utilize complex portfolio mechanisms or cumbersome deductible calculations. Those portions of this section which are still applicable have been included elsewhere in the proposed regulations establishing the insurance claim and benefit procedure.

(18) Amount of payment—Section 250.738. This section has been completely rewritten to stipulate that, upon acquiring title to a property through foreclosure of a defaulted mortgage, or through other means, the agency may file a claim for initial payment of insurance benefits. the total benefits amount would be reduced by any amount still outstanding of principal or interest owed to HUD by the agency as a result of any advance made by HUD to the agency in order to facilitate the execution of a special forbearance agreement during the period of mortgage default. In addition, this section puts a dollar limit on HUD's share of coinsurance liabilities.

(19) Disposition of property—Section 250.739. Several technical and clarifying modifications have been proposed in this instance to effect compatibility between these property disposition provisions and the other revised sections dealing with claim and benefits procedures.

(20) Items added to principal in computing claim payment—Section 250.740. Subsection (d) has been revised substantially. The existing provision requires the payment of interest by HUD at the contract rate on the unpaid principal amount for the period from the date of acquisition of title to the property by the lender to the date of payment of insurance benefits. The proposed provision calls for contract interest on only the difference between the principal and the amount included in the intiial benefits payment, computed for the period from date of acquisition of title to date of final payment of insurance benefits.

(21) Items deducted from principal in computing claim payment—Section 250.741. Various clarifying technical revisions have been proposed. Under the proposed regulations, HUD is to be fully reimbursed for all amounts due pursuant to a direct claim payment offset procedure set forth at § 205.738(d).

Interested persons are invited to submit written comments, views, or data regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. All such submissions received on or before January 29, 1979 will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the address set forth in the preceding paragraph.

The requirements of Executive Order 11821 regarding economic impact have been met.

Accordingly, Part 250 of Chapter II of 24 CFR is proposed to read as set forth below.

PART 250—COINSURANCE

Subpart A—General Provisions

Sec.
250.1 Purpose.
250.2 Definition of State Housing Agency.
250.3 Approved agency.
250.4 Effect of implementation of program on mortgage market.
250.5 Utilization of existing multifamily insurance authorities.
250.6 Effect of availability of coinsurance.
250.7 Effect of availability of coinsurance on flow of mortgage credit to older, declining areas.
250.8 Coinsurance pursuant to Section 223(e) not available.
250.9 Safeguards for consumers.

Subpart B—Certification of a State Housing Agency as an Approved Agency

250.201 Review of state agency prior to certification as an approved agency.
250.202 Certification as an approved agency.
250.204 Withdrawal of approval.
250.205 Effect of withdrawal of certification as an approved agency on insurance commitments made while it was approved.
250.207 Mortgage servicing during coinsurance period.
250.208 Required regulatory agreement with mortgagors.

Subpart C—Eligibility Requirements Applicable to All Mortgages to be Coinsured

250.301 Application.
250.302 Application fees, inspection fees, and service charges.
250.305 Processing and commitment.

ELIGIBLE MORTGAGES

250.309 Mortgage form.
250.310 Mortgage lien.
250.311 Maturity.
250.312 Payment requirements.
250.312a Application of mortgage payments.
250.313 Mortgage to cover the entire property.
250.314 Covenant for hazard insurance.
250.315 Accumulation of accruals.
250.316 Prepayment privileges.
250.317 Late charge.
250.318 Maximum mortgage interest rate.
250.320 Loans to cover 2-year operating loss.
250.321 Mortgagor's certificate of non-discrimination and mortgage covenant regarding use of property.

SUPERVISION OF MORTGAGORS

250.322 Regulation of mortgagors.
250.323 Supervision applicable to all mortgagors.
250.324 Supervision applicable to general mortgagors.
250.325 Supervision applicable to limited distribution mortgagors.
250.326 Supervision applicable to cooperative mortgagors.
250.327 Occupancy requirements applicable to all mortgagors.

PREVAILING WAGE REQUIREMENTS

250.328 Applicability of prevailing wage requirements.
250.329 Discrimination prohibited.

PROPERTY REQUIREMENTS

250.330 Eligibility of property.
250.331 Development of property.
250.332 Commercial and community facilities.

COST CERTIFICATION REQUIREMENTS

250.333 Certification of cost requirements.
250.334 Form of contract.
250.335 Certificate as to subcontracts.
250.336 Certificate of actual cost—contents in general.
250.337 Certificate of actual cost—builder's and sponsor's profit and risk allowance.
250.338 Contractor's certification.
250.339 Records.
250.340 Certificate of public accountant.
250.341 Certification of actual cost—land value.
250.342 Reduction in mortgage amount—new construction.
250.343 Reduction in mortgage amount—rehabilitation.
250.344 Requisites of agreement and certification.
250.345 Cost certification incontestable.

TITLE

250.346 Eligibility of title.
250.347 Title evidence.
250.348 Effect of amendments.

Subpart D—Requirements Applicable to Mortgages Insured Under Section 221(d)(3) or 221(d)(4)

ELIGIBLE MORTGAGORS

250.401 Eligible mortgagors

MAXIMUM MORTGAGE AMOUNTS

250.402 Maximum mortgage amounts.
250.403 Adjusted mortgage amount—rehabilitation projects.

Subpart F—Contract Rights and Obligations

250.701 Definitions.
250.703 Creation of contract of coinsurance.

MORTGAGE INSURANCE PREMIUMS

250.705 Amount of MIP to be collected from the mortgagor.
250.706 Method of payment of MIP.
250.707 Annual payment of MIP on a level percentage of the declining principal balance.
250.710 Duration of MIP.

DEFAULT UNDER THE MORTGAGE

250.715 Definition of default.
250.716 Date of default.
250.717 Notice of default.
250.718 Reinstatement of defaulted mortgage.
250.719 Forbearance relief.
250.720 Special forbearance agreement.

ADVANCES BY COMMISSIONER TO AGENCY

250.723 Advance to agency.

TERMINATION

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AUTHORITY: Sec. 244, National Housing Act (12 U.S.C. 1715 Z9).

Subpart A—General Provisions

§ 250.1 Purpose.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new section 244 entitled Coinsurance. Section 244, as amended by Section 6 of the Housing Authorization Act of 1976, authorizes the Secretary of Housing and Urban Development to insure and make a commitment to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provision, pursuant to a coinsurance contract providing that the agency will (1) assume a percentage of any loss and (2) carry out (subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary approves.

(b) By placing some of the risks which HUD now assumes when insuring mortgages on approved State Housing Agencies the coinsurance program could help to assure more careful initial evaluation of proposed projects by lenders who are willing to accept some, but are unwilling to accept all, of the risk of mortgage lending for rental housing projects. It could also make feasible assumption by lenders of the processing responsibilities incidental to a mortgage insurance program and thereby reduce the time required to approve applications for mortgage insurance.

(c) The Congress indicated its concern that in delegating mortgage insurance processing duties to lenders, physical inspections of new dwelling units be continued in accordance with the same standards used under the regular HUD programs. To accord with these concepts, this part sets forth the Department's regulations describing a coinsurance program for

mortgages on multifamily projects underwritten by State Housing Agencies.

(d) The primary purpose of this program is for HUD to assume some of the risk exposure of the multifamily loans made by State Housing Agencies, thereby reducing the perceived risks to investors and increasing the agencies' access to capital markets. In recognition of the capabilities of State Housing Agencies, their successful operating histories and their accountability to their individual State governments, these regulations vest the maximum amount of processing responsibilities with these agencies.

§ 250.2 Definition of State Housing Agency.

As used in this part, the term "State Housing Agency", or "Agency", means any public body, agency, or instrumentality created by a specific act of a state legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction, or rehabilitation, for persons and families of low and moderate income.

§ 250.3 Approved agency.

An approved agency under this part must be a State Housing Agency certified as eligible to underwrite mortgages for coinsurance as provided in § 250.202. The HUD Central Office shall have sole responsibility for the certification of approved agencies pursuant to the requirements of this part.

§ 250.4 Effect of implementation of program on mortgage market.

Section 244 of the National Housing Act requires that no contract of coinsurance be entered into under this part until the Secretary has, after due consultation with the mortgage lending industry, determined that a program for State Housing Finance Agencies, as authorized by Section 244, will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under provisions of the National Housing Act other than Section 244. The Department intends to monitor continuously the impact of this program and to consider evidence submitted at any time which would tend to suggest that disruptions in the mortgage market or reduced availability of mortgage credit to borrowers is casually related to the availability of coinsurance under this part.

§ 250.5 Utilization of existing multifamily insurance authorities.

With respect to mortgages to be coinsured under this part, mortgage insurance will be provided under Section 221(d)(3) or Section 221(d)(4) of the National Housing Act and the regulations implementing those sections as set forth in this part.

§ 250.6 Effect of availability of coinsurance.

No insurance authorized under any provision of the National Housing Act other than Section 244 of that Act shall be withdrawn, denied, or delayed by reason of the availability of insurance under the program authorized by this part.

§ 250.7 Effect of availability of coinsurance on flow of mortgage credit to older, declining areas.

Insurance will continue to be available under this part only to the extent the Secretary has determined that the availability of insurance authorized by this part does not adversely effect the flow of mortgage credit to older, declining areas and to the purchasers of older and lower-cost housing.

§ 250.8 Coinsurance pursuant to Section 223(e) not available.

Insurance authorized by this part will not be available for mortgages on properties which are eligible to be insured solely pursuant to the authority of Section 223(e) of the National Housing Act.

§ 250.9 Safeguards for consumers.

(a) The inspection of construction on projects covered by mortgages approved for coinsurance prior to the beginning of construction under this part shall be conducted in accordance with the standards and criteria set forth in Subpart S of Part 200 of this chapter and used with respect to dwellings or projects approved for mortgage insurance under provisions of Title II of the National Housing Act other than Section 244.

(b) The National Environmental Policy Act of 1969, as amended, is applicable to major Federal actions proposed pursuant to this part. The Secretary may make appropriate provisions for the delegation to a State agency of preparation of any detailed statement required pursuant to Section 102(2)(C) of that statute. However, final responsibility for making determinations related to environmental impact which are not delegable under the National Environmental Policy Act of 1969 has been retained by the Department of Housing and Urban Development.

Subpart B—Certification of a State Housing Agency as an Approved Agency

§ 250.201 Review of state agency prior to certification as an approved agency.

Certification of a State Housing Agency as an approved agency, eligible to underwrite and service mortgages on multifamily projects for coinsurance, will be made after an on-site review of the Agency's operations by HUD. This review will cover the adequacy of the Agency's technical staff, procedures for screening and processing applications for mortgage insurance, and the Agency's capability to service such mortgages and supervise project management.

§ 250.202 Certification as an approved agency.

A State Housing Agency whose technical staff and procedures for screening and processing applications have been deemed satisfactory after the review required by § 250.201; which has been approved as a mortgagee pursuant to § 203.1(d) of this chapter; and which meets the following special requirements may be certified as an approved agency eligible to underwrite mortgages on multifamily projects under this part:

(a) It shall provide a written opinion of its Counsel that it has the necessary powers under State law to participate in the program authorized under this part;

(b) It shall submit satisfactory evidence to the Commissioner: (1) That its assets are properly proportioned to its liabilities and are adequate for, and invested properly in relation to, the character and extent of its intended operations; and (2) that it can meet its share of the coinsurance liabilities or losses for the mortgage loans covered by the provisions set forth in this part. For the latter such evidence may include funds placed in escrow, a state mortgage insurance fund, a pledge of specified funds that may be received by the State government from the Federal government under one or more of the revenue sharing programs authorized by the Congress, an unqualified legal opinion from the State Attorney General that the State government has the resources, and will make every effort to provide from whatever sources it deems appropriate such sums as may be required which, together with the unencumbered resources of the agency, will be sufficient to meet the agency's liabilities or losses arising from the loans covered by the coinsurance written pursuant to this part, and where the Governor shall cause the amount of such deficiency, if any, to be placed in the budget of the State for the next succeeding fiscal year, so that the State legislature shall be enabled to provide appropriation sufficient to make up any such deficiency or otherwise to avoid any default. Such amount appropriated, if any, shall be repaid to the State as soon as possible by the agency from monies in the general fund in excess of the amount required to make and keep the agency self-supporting;

(c) It shall submit evidence to the Commissioner that it has established procedures for discharging full underwriting, servicing and property disposition functions in a manner which is not inconsistent with the requirements of this part;

(d) It shall submit to periodic auditing and review by the Commissioner or the Comptroller General of the United States with respect to its participation in the program authorized by this part;

(e) It shall submit its most recent detailed audit report of its books made by an independent certified public accountant selected in accordance with applicable State law or procedures supplemented by such additional financial information as the Commissioner shall request;

(f) It shall file with the Commissioner similar annual audits within (1) such period of time required pursuant to agency statute and procedures, or (2) within 150 days of the closing of its fiscal year so long as its approval as an approved agency continues;

(g) It shall have the capability, either through technical staff employed by it, or through contracts with persons outside the agency, to discharge full mortgage underwriting, servicing and property disposition functions;

(h) It shall promptly notify the Commissioner of any changes in its processing procedures which take place after its certification as an approved agency, and shall rescind any change in its processing procedures which the Commissioner determines is inconsistent with the requirements of this part;

(i) It shall have in its immediate employ a technical staff consisting of at least one individual who is knowledgeable in the area of construction, on in underwriting skills, and one who is skilled in the management of multifamily projects;

(j) It shall have in its immediate employ staff with sufficient professional and technical competence to monitor the performance of any work it contracts to have done by persons outside the agency such as appraisals, costs, architectural, engineering and management services;

(k) All appraisers used by the agency must adhere to minimum standards of education and experience established by the Commissioner.

§ 250.204 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for coinsurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title as a resut of withdrawal of morgagee approval pursuant to § 203.07 of this chapter or for any of the following causes:

(a) Failure to maintain satisfactory capital funds or structure;

(b) Failure to perform underwriting, servicing, or property disposition functions consistent with the requirements of this part;

(c) Failure to discharge responsibilities under a contract for coinsurance;

(d) The transfer of a coinsurance mortgage to any entity without the advance approval of the Commissioner;

(e) The failure to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, and to deposit such funds to a special account or accounts;

(f) The use of escrow funds for any purpose other than that for which they were received;

(g) The payment by the agency of any fee, kickback, or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other payment or other consideration from the mortgagor, the seller, the builder, or any other persons for services related to such transaction or transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner;

(h) Such other reason as the Commissioner determines to be justified particularly if the default ratio as measured by dollar balances exceeds 20 percent.

§ 250.205 Effect of withdrawal of certification as an approved agency on insurance commitments made while it was approved.

Withdrawal or termination of a State Housing Agency's certification as an approved agency under this part will not affect any mortgage insurance commitment issued while the Agency was an approved agency or the insurance on mortgages accepted for insurance while the Agency was an approved agency.

§ 250.207 Mortgage servicing during coinsurance period.

Servicing functions during the period when the Commissioner is a coinsurer of the mortgage shall be performed only by the agency, except that the agency may elect to delegate servicing to another entity if the agency retains its obligations under this part.

§ 250.208 Required regulatory agreement with mortgagors.

(a) The agency and the mortgagor shall effect an agreement whereby the mortgagor, as further consideration for the making of the mortgage loan, contracts with the agency and with the Commissioner that it will fulfill the provisions of Subpart C, §§ 250.322 through 250.327. Such regulation or restriction will be in the form of a regulatory contract between the mortgagor and the agency which shall be rsponsible for enforcing the provisions of the regulatory contract.

(b) Further, the agency may regulate and restrict the mortgagor, as long as the Commissioner and the agency are coinsurers of the mortgage, on such other matters as may be required by the agency as conditions for lending which do not conflict with the requirements of the Commissioner under this part.

Subpart C—Eligibility Requirements Applicable to All Mortgages To Be Coinsured

§ 250.301 Application.

The application for a commitment to make a coinsured mortgage loan on a project shall be submitted to the agency by the sponsor of such project accompanied by such exhibits as may be required by the agency to enable the agency to comply with requirements for coinsurance of the mortgage established under this part. An application for a commitment to make a mortgage loan may be required by the agency prior to the submission of the application contemplating mortgage insurance.

§ 250.302 Application fees, inspection fees, and service charges.

The agency may collect from the mortgagor such application fees, inspection fees, and initial service charges as it may require to reimburse itself for the cost of processing an application, conducting inspections, and closing a mortgage transaction, provided the total of such fees and charges does not exceed the maximum amount allowable under the applicable full insurance program, i.e., section 221(d)(3) or (d)(4).

§ 250.305 Processing and commitment.

(a) The agency shall perform all of the processing and make all of the determinations of the eligibility of a mortgage for coinsurance under this part except for the required determinations related to environmental impact which are not delegable under

the National Environmental Policy Act of 1969, and, upon completion of such processing and determinations, shall submit to the Commissioner a request for issuance of a commitment for mortgage insurance, which application shall be acted upon by the Commissioner and returned to the agency promptly. A commitment to insure issued by the Commissioner shall be based upon certifications made by the agency as to its compliance with the requirements of this part. A commitment to insure shall be effective for a designated term within which period the mortgagor is required to begin construction or rehabilitation, and if construction or rehabilitation is begun as required, the commitment shall be effective for such additional period as determined by the agency. The term of a commitment may be extended or may be amended in such manner as the agency may prescribe from time to time pursuant to an application to the Commissioner, provided it has been approved by him, for such extension or amendment of said commitment, which application shall be acted upon by the Commissioner and returned to the agency promptly after receipt thereof. An expired commitment may be reopened if a request for reopening is received by the Commissioner from the agency within 90 days of the expiration of the commitment and the Commissioner shall act upon the application for reopening of such expired commitment in the manner prescribed for amendment or extension of commitments herein above set forth. Upon completion of construction or rehabilitation and receipt by the Commissioner of the agency's certification that the terms and conditions of the commitment for coinsurance have been satisfied, the Commissioner shall, promptly after receipt of application, indicate his insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance. All agency submissions must include certifications of compliance by the agencies with such previous participation clearance requirements and procedures as may be established by the Commissioner.

(b) The agency shall submit not less than the first 5 commitments for endorsement to be covered by the coinsurance provisions as set forth in this subpart to the Commissioner so that he may ascertain that the agency in processing applications is in full compliance with the requirements prescribed by the Commissioner.

ELIGIBLE MORTGAGES

§ 250.309 Mortgage form.

(a) The mortgage shall be executed on the agency's form as approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the agency and the Commissioner in writing.

§ 250.310 Mortgage lien.

A mortgagor shall certify at endorsement of the loan for insurance and the agency shall determine that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the agency and the Commissioner. Liens other than the insured mortgage which may be approved (other than liens for taxes and assessments of the State or subdivisions of the State not yet due and payable, or ground rents) may not have under applicable law a priority equal or superior to the insured mortgage.

(b) There will not be outstanding any unpaid obligation contracted for in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the agency and the Commissioner. Obligations of the mortgagor shall be approved under this section only if such obligations are determined to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 250.311 Maturity.

The mortgage shall have a maturity satisfactory to the agency, not in excess of 40 years from commencement of amortization or for such longer term as may be approved by the Commissioner.

§ 250.312 Payment requirements.

(a) Method of payment. The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the agency and the Commissioner.

(b) Date of first payment to principal. The agency shall estimate the time necessary to complete the project and shall establish pursuant to standards adopted by the agency the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than that deemed necessary and appropriate by the agency to obtain sustaining occupancy.

§ 250.312a Application of mortgage payments.

The mortgage shall provide that all monthly payments being made by the mortgagor to the agency shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The agency shall apply all payments received from the mortgagor or for the account of the mortgagor to the following items in the order set forth:

(a) Premium charges under the contract of insurance, where applicable.

(b) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 250.313 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 250.314 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured against loss or damage by fire and lightning upon a repair or replacement basis if available, and otherwise to the full insurable value of the project, with deductible provisions not to exceed $5,000 for any one casualty. The mortgagor must also carry boiler explosion insurance on all boilers, pressure vessels and pressure piping in the project in an amount not less than the repair or replacement cost with coverage for bodily injury. Business interruption or use and occupancy insurance and general public liability insurance against claims for bodily injury and property damage must also be carried. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the agency and the Commissioner, as their interests may appear.

§ 250.315 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the agency on each interest payment date of an amount sufficient to accumulate in the hands of the agency one payment period prior to its due date, the next annual mortgage insurance premium. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the agency as will amortize the ground rents, if any, and the

estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 250.316 Prepayment privileges.

Where the mortgage is given to secure a loan made by a mortgagee which has obtained the funds for such loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a provision that the mortgage indebtedness may not be prepaid in whole or in part without prior written consent of the mortgagee and the Commissioner. The consent of the mortgagee to prepay the debt, in whole or in part, may be conditioned upon payment to the mortgagee by the mortgagor of such fees and charges which are reasonable as determined by the Commissioner and which are related to the mortgagee's cost of redeeming the bonds or bond anticipation notes sold to finance the loan.

§ 250.317 Late charge.

The mortgage may provide for the collection by the agency of a late charge, not to exceed 2 cents for each dollar of each payment to interest and principal more than 15 days in arrears, or such other charges as may be agreed to by the agency and the Commissioner, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 250.318 Maximum mortgage interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9 percent per annum with respect to mortgages receiving initial endorsement (or endorsement in cases involving insurance upon completion) on or after September 2, 1975. Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 250.320 Loans to cover 2-year operating loss.

(a) Operating loss determination. When the agency determines that an operating loss has occurred during the first 2 full years following completion of the project, it may, in its discretion, make a loan to cover such loss which shall be eligible for insurance under this part. For the purposes of this section, an operating loss shall occur when the agency determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) Security instrument. The loan shall be secured by an instrument in a form approved by the Commission for use in the jurisdiction in which the project is located.

(c) Maximum interest rate. The loan may bear interest at such rate as may be agreed upon by the agency and the mortgagor, but in no case shall such rate exceed the highest mortgage interest rate provided for under this part on the date that the loan is extended. Interest shall be payable in monthly installments on the principal then outstanding.

(d) Maximum maturity. The loan shall be limited to a term not exceeding the unexpired term of the mortgage.

§ 250.321 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the agency as to each of the following points:

(1) That neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any part of the property covered by the mortgage to any person because of race, color, sex, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended on the date the mortgage was executed.

SUPERVISION OF MORTGAGORS

§ 250.322 Regulation of mortgagors.

The mortgagor and the agency may agree to such regulation and restriction of the actions of the mortgagor by the agency as they deem desirable: *Provided,* That the requirements set forth in §§ 250.323, 250.324, 250.325, 250.326 and 250.327 are adhered to.

§ 250.323 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the agency.

(b) The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the agency.

(c) In all projects a fund for replacements shall be established and maintained with the agency. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the agency, the Commissioner, and the Comptroller General or their duly authorized agents at all reasonable times.

(e) The mortgagor shall execute and deliver to the agency a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the agency on the date the certificate is executed. So long as the mortgage is coinsured under this part, the mortgagor's books and accounts will be kept in accordance with the requirements of the agency; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the agency; will be maintained for such periods of time as may be prescribed by the agency; and will be available to the agency, and to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the agency the following reports verified by the signature of such officers of the mortgagor as the agency may designate and in such form as prescribed by the agency.

(1) Monthly occupancy reports as required by the agency.

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the agency, certified to by an officer of the mortgagor and, when required by the agency, prepared and certified by a Certified Public Accountant, or other public accountant acceptable to the agency.

(3) Specific answers to questions upon which information is desired

from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the coinsured mortgage.

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(5) At the end of each calendar quarter the agency shall report to the Commissioner on any mortgagors encountering financial difficulties and on corrective actions being taken to alleviate such difficulties.

§ 250.324 Supervision applicable to general mortgagors.

General mortgagors may include mortgagors which under State law or rules are required to be limited or regulated as to rates of return or distribution of profits, but which are not required to be so limited or regulated under the provisions of Section 221(d)(4) of the National Housing Act if the mortgage is insured under that section. The following restrictions and regulations will be applicable to general mortgagors:

(a) Capital structure. (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest, or, in the case of a partnership, participations therein may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency.

(b) Distribution of earnings. Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after the payment of and segregation of such funds as determined by the applicable laws and procedures of the agency.

(c) Borrowed funds. No distribution of any kind may be made from borrowed funds.

(d) Rents and charges. In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants.

§ 250.325 Supervision applicable to limited distribution mortgagors.

(a) Rate of return. The amount of any allowable distribution or disbursement from surplus cash generated by the mortgagor will not exceed in any one fiscal year more than such percentage of the mortgagor's initial equity investment as is agreed to by the agency and the Commissioner. The right of allowable distribution or disbursement from surplus cash may be cumulative. Dividends or other distributions may be declared or made only as of or after the end of a semiannual fiscal period. No dividends or other distribution shall be declared or made except out of surplus cash and pursuant to applicable laws and procedures of the agency.

(b) Rents and charges. In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a rate of return on the investment not exceeding the rate limitation of paragraph (a) of this section, and consistent with providing reasonable rentals to tenants.

(c) Borrowed funds. No distribution of any kind may be made from borrowed funds.

§ 250.326 Supervision applicable to cooperative mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the agency.

(b) Except with the prior written approval of the agency, no compensation shall be paid by the corporation to its officers or directors, as such, or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed to by the agency, and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

(c) A general operating reserve shall be established and maintained as long as the mortgage is coinsured under this part in a manner and for the purposes specified in the charter or regulatory agreement.

(d) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

§ 250.327 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the agency that so long as the mortgage is coinsured under this part the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family by reasons of the fact that there are children in the family unless the project was designed expressly for occupancy by elderly patrons;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service;

(c) Sell the project as long as the mortgage is coinsured under this part, unless the purchaser also certifies under oath as is required by paragraphs (a) and (b) of this section.

(d) Preference for displacees. A preference or priority of opportunity to rent dwelling units shall be given to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

PREVAILING WAGE REQUIREMENTS

§ 250.328 Applicability of prevailing wage requirements.

(a) In general. Prevailing wage requirements shall be applicable to a mortgage insured under this part, except those specified in paragraph (b) of this section, and compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) Labor standards. Any contract, subcontract, or building loan agreement executed for the performance of construction or rehabilitation of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1-5.12 (16 FR 4430).

(2) Ineligible contractors. No construction or rehabilitation contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcon-

tractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General pursuant to § 5.6(b) of the regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 FR 4431).

(b) Excepted transactions. The requirements of paragraph (a) of this section shall not be applicable to a project involving a cooperative where the agency and the Commissioner have waived the requirements and each of the following circumstances occurs.

(1) The laborers or mechanics not otherwise employed in the construction or rehabilitation of such project are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(2) The mortgagor establishes to the satisfaction of the agency and the Commissioner that amounts saved by the donated services will be credited to the account of the mortgagor.

§ 250.329 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, sex, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provision.

PROPERTY REQUIREMENTS

§ 250.330 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than the term of the mortgage where the interest of the fee owner of the real estate is subordinate to the interest of the agency; or

(3) Under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such lease: Provided, That the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of other liens except those approved by the agency.

§ 250.331 Development of property.

(a) Obligation of the mortgagor. The mortgagor shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use. The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(b) Minimum number of units. A project shall consist of not less than five dwelling units.

§ 250.332 Commercial and community facilities.

(a) The project may include only such commercial and community facilities as the agency determines will be adequate and appropriate to serve the occupants, and such additional facilities permitted under the provision of the National Housing Act pursuant to which coinsurance is being provided as may be agreed to by the Commissioner and the agency.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other in-patient or out-patient health facilities, and other essential service facilities for use by elderly or handicapped families.

COST CERTIFICATION REQUIREMENTS

§ 250.333 Certification of cost requirements.

(a) Prior to endorsement of the mortgage for insurance, the agency shall enter into an agreement with the mortgagor in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 250.334.

(2) To execute a certificate of actual construction costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over 90 percent of actual costs, unless the mortgagor is a nonprofit or cooperative entity utilizing the provisions of Section 221(d)(3), in which case 100 percent of such costs shall apply.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 250.334 Form of contract.

(a) In general. The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, which may include a fee to the builder in an amount allowed by the agency.

(b) Lump sum contract. A lump sum contract may be used where it is established to the satisfaction of the agency that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor, and where the mortgage is executed by a limited distribution or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the agency makes the foregoing determination as to nonidentity of interest and it is established to the agency's satisfaction that a cost plus form of contract is not required to protect its interests or the interests of the cooperative mortgagor.

(c) Cost plus contract. A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is determined by the agency that a cost plus form of contract is required to protect the interests of the agency or mortgagor.

(3) Where the mortgage is executed by a nonprofit mortgagor, unless it is established to the agency's satisfaction that a cost plus contract is not required to protect its interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 250.335 Certificate as to subcontracts.

If it is determined by the agency that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier of the general contractor, the mortgagor must certify to the agency prior to execu-

tion of a subcontract or a contract for the supply of materials that the amounts to be paid to such subcontractor or material supplier are not more than the rate prevailing in the locality for similar type labor and materials. If the determination of financial interest is made by the agency after work is performed or materials supplied under such contracts, the certificate of the mortgagor shall be executed prior to insurance endorsement of the mortgage by the Commissioner.

§ 250.336 Certificate of actual cost—contents in general.

(a) Submission of certificate. The mortgagor's certificate of actual cost, in a form approved by the Commissioner, shall be submitted prior to endorsement and upon completion of the improvements to the satisfaction of the agency.

(b) Items to be included. The certificate shall show the actual cost to the mortgagor of:

(1) The cost plus construction contract, including the builder's fee actually paid and approved by the agency; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The offsite public utilities and streets not included in subparagraph (1) of this paragraph.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the agency.

(c) Items not to be included. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders, or partners. Any such payments, if included, shall be deducted from the cost determined under paragraph (b) of this section.

§ 250.337 Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) In general. The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit or a cooperative mortgagor) an allowance for builder's and sponsor's profit and risk. The amounts of the allowance shall be dependent upon a determination by the agency as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) Identity of interest cases. Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 250.336(b)(1). This allowance shall be 10 percent of the actual cost, or such lesser amount as the Commissioner shall provide by subsequent amendment to these regulations. Actual cost shall be computed in accordance with § 250.336, excluding the following items:

(1) Any builder's fee actually paid and approved by the agency. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) Nonidentity of interest cases. Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost or such lesser amount as the Commissioner shall specify, computed in accordance with § 250.336, excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

§ 250.338 Contractor's certification.

(a) Certification by general contractor. Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the agency to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form approved by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) Certification by subcontractor. Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontractors, and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner or the agency, and it is determined by the agency that an identity of interest exists between the general contractor, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner or the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 250.339 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the agency, the Commissioner, or the General Accounting Office shall make available for examination such records including any collateral agreements.

§ 250.340 Certificate of public accountant.

In all projects, the certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted audit standards to the extent deemed necessary to verify the actual costs.

§ 250.341 Certification of actual cost—land value.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the agency's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to demolition and to the construction of the proposed on-site improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost: Provided, That in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 250.342 Reduction in mortgage amount—new construction.

If the principal obligation of the mortgage exceeds 90 percent of the

total amount as shown by the certificate of actual cost plus the value of the land, the mortgage shall be reduced by the amount of such excess, subject to the 100 percent limitation set forth at § 250.333(a)(3).

§ 250.343 Reduction in mortgage amount—rehabilitation.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 250.337 and the applicable reduction in mortgage amount will be required. Such mortgage shall also be subject to the following limitations:

(a) Property held in fee. If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) Property subject to existing mortgage. If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the agency, the amount of the existing mortgage or 90 percent, subject to the 100 percent limitation set forth at § 250.333(a)(3), of the agency's estimate of the fair market value of the land and existing improvements prior to repair and rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

(c) Property to be acquired. If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the agency's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds 90 percent, subject to the 100 percent limitation set forth at § 250.333(a)(3), of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

§ 250.344 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 250.333 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner, and may be relied upon by the Commissioner and the agency as a true statement of the facts contained therein.

§ 250.345 Cost certification incontestable.

Upon the agency's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

TITLE

§ 250.346 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the agency must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the agency and the original endorsement of the credit instrument for insurance by the Commissioner will be evidence of its acceptability.

§ 250.347 Title evidence.

(a) Upon insurance of the mortgage, the mortgagor shall furnish to the agency a survey of the mortgaged property, satisfactory to the agency and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the agency deems satisfactory, title insurance cannot be furnished, the mortgagor shall furnish such evidence of title in accordance with paragraph (a)(2), (3) or (4) of this section, as the agency may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the agency. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the agency. The policy shall name as the insured the agency and the mortgagor as their interests may appear. The policy shall provide that upon acquisition of title by the agency, it will become an owner's policy running to the agency.

(2) An abstract of title satisfactory to the agency, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the agency as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

§ 250.348 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not adversely affect the interests of any agency or mortgagor under any contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of an agency or mortgagor on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart D—Requirements Applicable to Mortgages Insured Under Section 221(d)(3) or 221(d)(4)

ELIGIBLE MORTGAGORS

§ 250.401 Eligible mortgagors.

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) Nonprofit. The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the agency finds is in no manner controlled by, or under the direction of, persons of firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of States or agencies thereof, or the agency, as to rents, charges, and methods of operation.

(b) Limited distribution mortgagor. The limited distribution mortgagor may be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the agency) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation.

(c) Cooperative mortgagors. (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the agency which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the agency.

(2) Such a mortgagor will be regulated or restricted by the agency as to rents or sales, charges, rate of return, and methods of operation.

(d) General mortgagors. A general mortgagor shall be any mortgagor, approved by the agency, not meeting the eligibility requirements of paragraphs (a) through (c) of this section which, until the termination of all obligations of the agency and the Commissioner under the insurance contract and during such further period of time as

the agency shall be the owner or holder of the mortgage, is regulated or restricted by the agency as to rents or sales, charges, capital structure, rate of return, and methods of operation.

MAXIMUM MORTGAGE AMOUNTS

§ 250.402 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) Dollar limitations on unit. For such part of the property attributable to dwelling use (excluding exterior land improvement) an amount per family unit, depending upon the number of bedrooms, which may be:

(i) For projects insured under Section 221(d)(3) of the Act:

(A) $16,860 without a bedroom
(B) $18,648 with one bedroom
(C) $22,356 with two bedrooms
(D) $28,152 with three bedrooms
(E) $31,884 with four or more bedrooms

(ii) For projects to be insured under Section 221(d)(4) of the Act:

(A) $18,450 without a bedroom
(B) $20,625 with one bedroom
(C) $24,630 with two bedrooms
(D) $29,640 with three bedrooms
(E) $34,846 with four or more bedrooms

(2) New construction. (i) In the case of new construction projects insured under Section 221(d)(3) of the Act and where the mortgagor is a nonprofit or cooperative, the agency's estimate of replacement cost of the property or project when the proposed improvements are completed. In the case of a nonprofit or cooperative project insured under Section 221(d)(4) of the Act, 90 percent of the agency's estimate of replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fee, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the agency. In addition to the foregoing items, a project reserve account not to exceed 5 percent of the total of all components of replacement cost exclusive of such account, may be included in the agency's estimate of replacement cost for a mortgage made by an agency recognized by the Commissioner as meeting the definition of a public housing agency in the U.S. Housing Act of 1937 as amended.

(ii) In the case of new construction under Section 221(d)(3) or 221(d)(4) where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the agency's estimate of the replacement cost of the property when the proposed improvements are completed. The replacement cost may include all items as described in (i) and shall include an allowance of 10 percent of those items exclusive of land unless the agency, after determining such allowance is unreasonable, prescribes a lesser percentage.

(3) Repair or rehabilitation. (i) In the case of a project which is to be repaired or rehabilitated and insured under Section 221(d)(3) of the Act and where the mortgagor is a nonprofit or cooperative, the sum of the estimated cost of the repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation. In the case of a nonprofit or cooperative project insured under Section 221(d)(4) of the Act, 90 percent of the sum of the estimated cost of repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs and rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation.

(b) Increased mortgage amount—elevator type structures. In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction, and rehabilitation design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraphs (a)(1) and (a)(2) of this section so as not to exceed:

(1) For projects to be insured under Section 221(d)(3) of the Act:

$19,680 per family unit without a bedroom
$22,356 per family unit with one bedroom
$20,496 per family unit with two bedrooms
$33,120 per family unit with three bedrooms
$33,400 per family unit with four or more bedrooms

(2) For projects to be insured under Section 221(d)(4) of the Act:

$20,962 per family unit without a bedroom
$24,030 per family unit with one bedroom
$29,220 per family unit with two bedrooms
$37,800 per family unit with three bedrooms
$41,494 per family unit with four or more bedrooms

(c) Increased mortgage amount—high cost areas. (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, but not to exceed 50 percent, the dollar limitations set forth in this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifices of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section the principal obligations of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) Maximum mortgage amount—leaseholds. The value or replacement cost on which the mortgage amount is based will be limited by the value or replacement cost of the leasehold estate, which shall be the value or replacement cost of the project in fee simple less the value of the leased fee. The value of the leased fee shall equal the market value of the site in fee simple before construction of on-site or offsite improvements. Where the lease provides for increasing ground rents over the term of the mortgage, the initial ground rent may not exceed the market value of the site "as is" in fee simple multiplied by 90 percent of the interest rate of the insured mortgage.

§ 250.403 Adjusted mortgage amount—rehabilitation projects.

A mortgage having a principal amount computed in compliance with this part, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations;

(a) Property held in fee. If the mortgagor is the owner of an unencumbered fee simple estate, the maximum mortgage amount shall not exceed 100 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation;

(b) Property subject to existing mortgage. If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed;

(1) Nonprofit or cooperative mortgagor. If the mortgagor is a nonprofit or cooperative, and the project is insured under Section 221(d)(3) of the Act, the agency's estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. In the case of projects insured under Section 221(d)(4) the Agency's estimate of the cost of the repairs or rehabilitation plus such por-

tion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repairs or rehabilitation.

(2) General or limited distribution mortgagor. If the mortgagor is a general or limited distribution mortgagor, the agency's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(c) Property to be acquired. If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount hall not exceed:

(1) Nonprofit or cooperative. If the mortgagor is a nonprofit or cooperative, and the project is insured under Section 231(d)(3) of the Act, the agency's estimate of the cost of the proposed repairs or rehabilitaton plus the lesser of either of the following:

(i) The actual purchase price of the land and improvements.

(ii) The agency's estimate of the value of such land and improvements prior to the repair or rehabilitation. If the project is to be insured under Section 221(d)(4), 90 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation plus 90 percent of the lesser of the actual purchase price of the land and improvements or the agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(2) General or limited distribution mortgagor. If the mortgagor is a general or limited distribution mortgagor:

(i) 90 percent of the agency's estimate of the cost of the repair or rehabilitation, plus

(ii) 90 percent of the lesser of the actual price of the land and improvements, or the agency's estimate of value of such land and improvements prior to the repair or rehabilitation.

Subpart F—Contract Rights and Obligations

§ 250.701 Definitions.

As used in this subpart the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) "Contract of coinsurance" means the agreement between the agency and the Commissioner for the coinsurance of a mortgage evidenced by the endoresement of the credit instrument by the Commissioner and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) "Mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "MIP" means the mortgage insurance premium paid by the agency to the Commissioner in consideration of the contract of coinsurance.

§ 250.703 Creation of contract of coinsurance.

(a) This subpart shall constitute the contract of coinsurance and the agency and the Commissioner shall be bound by the regulations in this subpart with the same force and effect and to the same extent as if a separate contract had been executed.

Mortgage Insurance Premiums

§ 250.705 Amount of MIP to be collected from the mortgagor.

HUD will collect from the agency a MIP from the date of the contract of coinsurance which shall not exceed the following schedule based on the amount of the principal obligation of the mortgage outstanding at any time without taking into account delinquent payments or prepayments. The agency in turn may collect such premium from the mortgagor:

(a) The MIP shall be the equivalent of 0.5 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 81 percent and 90 percent of such loss;

(b) The MIP shall be the equivalent of 0.4 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 71 percent and 80 percent of such loss;

(c) The MIP shall be the equivalent of 0.3 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 61 percent and 70 percent of such loss;

(d) The MIP shall be the equivalent of 0.25 percent per annum if the Commissioner's proportional potential share of the total loss on a defaulted mortgage is between 10 percent and 60 percent of such loss.

§ 250.706 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the agency in cash. The MIP will be paid annually on a level percentage of the declining principal balance.

§ 250.707 Annual payment of MIP on a level percentage of the declining principal balance.

(a) The agency shall pay to the Commissioner on the effective date of the contract of coinsurance, a first year mortgage insurance premium covering a period of one year, equal to the percentage set forth at Section 250.705 of the outstanding principal balance of the mortgage. Each year thereafter, the agency, on the anniversary date of the contract of coinsurance shall pay a premium for the following year, equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

(b) For operating loss loans made pursuant to § 250.320, the agency shall pay to the Commissioner, upon the endorsement of the credit instrument covering the operating loss loan, a first year mortgage insurance premium, covering a period of one year, equal to the percentage set forth in Section 250.705 of the outstanding principal balance of the mortgage. Each year thereafter, the agency shall pay a premium for the following year, equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

§ 250.710 Duration of MIP.

The MIP required under § 250.707 shall continue annually until the earliest date on which one of the following occurs:

(a) The mortgage is paid in full,

(b) A deed to the agency is filed for record, or

(c) The contract of coinsurance is otherwise terminated with the consent of the Commissioner.

Default Under the Mortgage

§ 250.715 Definition of default.

The following shall be considered a default under this subpart:

(a) Failure of the mortgagor to make any payment due under the mortgage;

(b) Failure of the mortgagor to perform any other covenant under the provisions of the mortgage, if the agency, because of such failure has accelerated the debt; or

(c) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage, which shall be considered a default under both the loan and the original mortgage.

§ 250.716 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the mortgagor when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

§ 250.717 Notice of default.

The agency shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 250.718 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred. The mortgagor shall pay to the agency such expenses as the agency has incurred in connection with the foreclosure proceedings and the agency shall give written notice of reinstatement to the Commissioner.

§ 250.719 Forbearance relief.

Notwithstanding the provisions of § 250.720 of this subpart, a mortgagor and an agency may enter into an agreement, not inconsistent with any provision of this part other than § 250.720, for the reduction or suspension of regular mortgage payments: *Provided*, That during such period of forbearance, all moneys received from rents or other sources must be applied toward the payment of operating costs, and not dividends.

§ 250.720 Special forbearance agreement.

(a) In a case where the mortgage is in default, but the mortgagor has made at least 50 percent of its scheduled monthly mortgage payments on a cumulative basis for a period of not less than one year, the mortgagor and the agency may enter into a special forbearance agreement for the reduction of regular mortgage payments for a specified period of time, if the agency determines that the default is due to circumstances beyond the mortgagor's control and the mortgage probably will be restored to good standing within a reasonable period of time.

(b) If the mortgagor fails to meet the requirements of a special forbearance agreement entered into under this section or to resume the regular monthly payment required under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the agency shall notify the Commissioner of such failure.

(c) A special forbearance agreement entered into under this section shall require the mortgagor to use all moneys received from rents or other sources toward payment of operating costs, and not dividends, during the period in which the advances described in § 250.723 are being made.

ADVANCES BY COMMISSIONER TO AGENCY

§ 250.723 Advance to agency.

(a) The Commissioner may make an advance to an agency which has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(b) Terms of advance: (1) The amount of an advance authorized by paragraph (a) of this section, shall not exceed one-half of the short-fall in debt service for a 36-month period (which need not occur consecutively), but in no case shall it exceed 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(2) The Commissioner may make quarterly payments of the amount of an advance to an agency authorized by this section and each quarterly payment shall not exceed that amount required to cover, for a 3-month period, 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(3) The agency shall execute a note payable to the Commissioner for the amount of each quarterly payment authorized by paragraph (b)(2) of this section which note shall provide for interest at the debenture rate established pursuant to § 250.742.

(4) The note shall also provide that:

(i) If the agency makes a claim for insurance benefits on account of a loss sustained with respect to a mortgage which has been the subject of a special forbearance agreement pursuant to the provisions of § 250.720, the Commissioner will debit that claim by the amount of any advances made on account of that mortgage (pursuant to this section) which have not been repaid plus the accrued interest.

(ii) If the default in a mortgage is cured, the agency will repay the advance plus interest to the Commissioner over a period of time not to exceed the remaining term of the mortgage.

(iii) Any payments made by a mortgagor under a special forbearance agreement to bring a mortgage which has been the subject of an advance pursuant to this subsection into good standing shall be divided equally between the agency and the Commissioner until that portion of the advance made by the Commissioner is repaid in full.

(iv) If the contract of coinsurance for the mortgage on which the advance was made shall be terminated in accordance with §§ 250.726 through 250.728, the note evidencing such advance shall remain in full force and effect and payable in accordance with its terms.

TERMINATION

§ 250.726 Termination of coinsurance contract.

The contract of coinsurance for each individual mortgage shall be terminated if:

(a) The mortgage is paid in full prior to its maturity;

(b) The agency acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits will be made;

(c) After completion of foreclosure the property is redeemed;

(d) The property is bid in and acquired at foreclosure sale by a party other than the agency; or

(e) The mortgagor and agency jointly request termination.

§ 250.727 Notice and date of termination by Commissioner.

The Commissioner shall notify the agency that the contract of coinsurance on a mortgage has been terminated and the effective termination date. The termination date shall be the last day of the month in which any one of the following events occurs:

(a) The date foreclosure proceedings were instituted, or the property was otherwise acquired by the agency, if the agency notifies the Commissioner that no claim for insurance benefits will be made:

(b) The date the mortgage was prepaid in full;

(c) The date a voluntary termination request is received by the Commissioner.

§ 250.728 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all

rights of the mortgagor and agency shall be terminated.

CLAIM PROCEDURE

§ 250.730 Acquisition of property.

At any time after the default of the mortgage and the determination by the agency to accelerate the total principal amount of the mortgage, the agency, at its election, shall (if no other eligible entity has assumed the obligations of the mortgagor) either (a) commence foreclosure of the mortgage; or (b) acquire possession of and title to the mortgaged property by means other than foreclosure. The agency shall notify the Commissioner of its action at the time it makes its election either to commence foreclosure of the mortgage or acquire possession and title by other means.

§ 250.731 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the agency may acquire the property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(a) The mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the mortgagor;

(c) The mortgage is satisfied of record as a part of the consideration for such conveyance; and

(d) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 250.732 Notice to Commissioner.

At the time the agency acquires title to the property, it shall give written notice to the Commissioner of its intention with respect to the filing of a claim for insurance benefits.

PAYMENT OF INSURANCE BENEFITS

§ 250.734 Method of payment.

Payment of all insurance claims shall be made in cash unless the agency files a written request for payment in debentures.

§ 250.738 Amount of payment.

(a) Upon acquisition of title to a property securing a defaulted mortgage in accordance with § 250.730, the agency shall be entitled to file a claim for the initial payment of insurance benefits. Such payment shall be in an amount equal to the product of the coinsurance factor multiplied by 75 percent of the difference between the unpaid principal balance of the mortgage on the date of the institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default and the appraised value of the property obtained in accordance with § 250.739(a). The coinsurance factor shall be equal to the percentage of total coinsurance loss which the Commissioner is obligated to absorb, pursuant to the application for insurance endorsement and the schedule of coinsurance coverage and applicable premiums set forth in § 250.705.

(b) Upon disposition of the property or upon the expiration of 12 months from the date of acquisition of the property, whichever occurs earlier, the agency shall file a claim for the final payment of insurance benefits. Such payment shall be in an amount which, when added algebraically to the amount of initial payment computed pursuant to § 250.738(a), will equal the total amount of insurance benefits computed pursuant to § 250.738(d). If the total benefits exceed the initial payment, the Commissioner will make a payment to the agency for the difference. If the initial payment exceeds the total benefits, the Commissioner will bill the agency for the difference. If the initial payment equals the total benefits, neither a payment nor a bill will be sent to the agency.

(c) The base amount for the computation of total insurance benefits shall be the sum of the unpaid principal balance of the mortgage on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, plus the sum of all of the items set forth at § 350.740, less the sum of all of the items set forth at § 250.741.

(d) The total amount of insurance benefits shall be equal to the product of the coinsurance factor cited at § 250.738(a) multiplied by the base amount computed pursuant to § 250.738(c), such product to be reduced by any balance of principal or interest due on a note from the agency to the Commissioner for advances made to the agency on a defaulted mortgage pursuant to § 250.723(b)(4)(i). In no case, however, may the total amount of insurance benefits exceed the Commissioner's share of coinsurance liability times the outstanding principal balance at the time of default.

§ 250.739 Disposition of property.

(a) Upon the acquisition of title to the property securing a defaulted mortgage in accordance with § 250.730, the agency shall obtain an appraisal of the property by an independent appraiser selected by the agency and approved by the Commissioner. The appraisal shall reflect the market value of the property, as of the date of acquisition, for use for the market originally intended.

(b) After the agency sells the property, or after the expiration of 12 months, whichever occurs earlier, the agency shall file a claim for the final payment of insurance benefits, pursuant to § 250.738(b).

(c) Upon making a claim to the Commissioner for the final payment of the insurance benefits, the agency shall notify the Commissioner, on an approved form, of the sale of the property, the purchase price, and income and expenses incurred in connection with the acquisition, repair, operation and sale of the property, and shall assign to the Commissioner, without recourse on warranty, any and all claims (other than the mortgage financing such sale) which the agency has acquired in connection with the transaction.

(d) If disposition of the property has not occurred by the date of the agency's claim for final payment, the agency shall utilize, in preparing such claim, the appraised value of the property obtained pursuant to § 250.739(a), in lieu of the net sale proceeds required by § 250.741(f).

§ 250.740 Items added to principal in computing claim payment.

The sum of the following items shall be added to the unpaid mortgage principal in computing the base amount for the computation of insurance benefits, pursuant to § 250.738(c):

(a) The amount of all payments made by the agency for taxes, special assessments and water rates which are liens prior to the mortgage; for fire and hazard insurance on the property; and for any mortgage insurance premiums paid after default;

(b) An amount equivalent to debenture interest at the rate established pursuant to § 250.742 on the principal of the mortgage unpaid on the date of the institution of foreclosure proceedings or on the date of the acquisition of the property otherwise after default, from the date of default to the date of acquisition of title; except that debenture interest shall not be payable for any period for which the agency receives mortgage interest during a forbearance agreement as provided in paragraph (c) of this section;

(c) The amount of the unpaid mortgage interest computed from the date of default to the date of acquisition of title in those cases where a forbearance agreement in accordance with § 250.719 has been executed;

(d) An amount equivelent to mortgage interest on the difference between the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, and the amount in-

cluded in the initial payment of insurance benefits made pursuant to § 250.738(a), from the date of acquisition of the property to the date of final payment of insurance benefits.

(e) Foreclosure costs or costs of acquiring the property otherwise actually paid by the agency and approved by the Commissioner, in an amount not in excess of two-thirds of such costs;

(f) Reasonable payments made by the agency for:

(1) Preservation, operation, and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD Minimum Property Standards, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner;

(3) Expenses in connection with the sale of the property.

§ 250.741 Items deducted from principal in computing claim payment.

The sum of the following items shall be deducted from the unpaid mortgage principal in computing the base amount for the computation of insurance benefits, pursuant to § 250.738(c):

(a) All amounts received by the agency on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All cash held by the agency or its agents or to which it is entitled, including deposits made for the account of the mortgagor.

(c) All funds held by the agency for the account of the mortgagor received pursuant to any other agreement.

(d) The amount of any undrawn balance under a letter of credit accepted by the agency in lieu of a cash deposit for an escrow agreement.

(e) Any net income received by the agency from the property securing the mortgage after the date of default.

(f) The net proceeds from the sale of the project, except that if the agency sells the project for an amount less than the appraised value on a negotiated sale the amount to be deducted will be the appraised value. If the property is sold on the basis of a competiive bidding procedure approved by the Commissioner, the net sale proceeds will be deducted notwithstanding that it is lower than the appraised value. If the property has not been disposed of within 12 months from the date of acquisition, the agency shall substitute the appraised value of the property for the net sale proceeds in preparing the claim for final payment of insurance benefits, pursuant to § 250.739(d).

§ 250.742 Debentures.

All of the provisions of § 207.259(e) of this chapter shall apply to mortgages coinsured under this subpart.

AMENDMENTS

§ 250.743 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of an agency under the contract of coinsurance on any mortgage already coinsured and shall not adversely affect the interest of an agency on any mortgage to be coinsured on which the Commissioner has made a commitment to insure.

(Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., October 31, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc. 78-35690 Filed 12-28-78; 8:45 am]

federal register

FRIDAY, DECEMBER 29, 1978

PART VII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

EXISTING HOUSING

Section 8 Housing Assistance Payments Program; Miscellaneous Amendments

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R78-469]

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Miscellaneous Amendments

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing a final rule with respect to miscellaneous amendments to the Section 8 Housing Assistance Payments Program—Existing Housing. This rule simplifies certain administrative procedures, increases operating flexibility, clarifies program provisions, and:

(1) Establishes Independent Group Residences as an eligible type of housing for elderly, handicapped and disabled individuals residing in group residences where supportive services are provided; and

(2) Encourages owner participation by revising the security deposit policies and deleting 2 program forms.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Louise Kleffner, Chief, Existing Housing Branch, Office of Assisted Housing Development, Housing, Department of Housing and Urban Development, Washington, D.C. 20410. (202) 755-5380. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On July 6 (42 FR 34652 and 34656) and October 21, 1977 (42 FR 56292), proposed and interim revisions to the Section 8 Existing Housing Program regulations, 24 CFR Part 882, were published in the FEDERAL REGISTER for public comment. Interested parties were given until August 5, 1977 and November 21, 1977, respectively, to submit written comments on the July 6 and October 21 publications. By the end of the comment period, 13 comments were received concerning the July 6, 1977 proposed rule, 5 comments were received in response to the July 6, 1977 interim rule, and 98 comments were received in response to the October 21, 1977 proposed rule. All comments were carefully considered, and changes have been made to the proposed and interim regulations based on these comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

PROPOSED RULE PUBLISHED JULY 6, 1977

One comment was received concerning the use of Recently Completed Housing rents for conversion of Section 23 projects (Section 882.101) which suggested that to facilitate conversions, Recently Completed Housing rents should be allowed regardless of the age of the building. The Department is now preparing new regulations for conversions which will address this issue and other policy issues surrounding the conversion of Section 23 projects to the Section 8 program. Accordingly, this comment is not being accepted. However, the proposed change to § 882.101(b)(7) is being adopted to clarify that the phrase "prior to the leasing thereof" means "prior to the leasing thereof under this Part."

These final rules adopt without change the proposed (1) revision of the definition of Congregate Housing to refer to the Housing Quality Standards for Congregate Housing, (2) addition of a sentence to § 882.107(b) to make it clear that the owner and family determine the term of the lease, and (3) addition of housing discrimination complaint forms to the Certificate holder's packet in § 882.209(b)(5). No comments were received on these matters.

Although no comments were received objecting to the proposed revision of § 882.108, "Rent Adjustments," which emphasized the applicability of the rent reasonableness limitation, the Department has determined to establish a uniform method of adjusting Section 8 Contract Rents. Therefore, the final rule requires that for Housing Assistance Payments Contracts entered into after the effective date of this final rule, annual adjustments to Contract Rents will be based on the most recently published Section 8 Annual Adjustment Factors (24 CFR 888). Different Adjustment Factor schedules will be provided for twenty-three Standard Metropolitan Statistical Areas and for four Census Regions on the basis of changes in the Consumer Price Index for rents and utilities.

For Housing Assistance Payments Contracts entered into prior to the effective date of this final rule, annual adjustments may continue to be based on the percentage of change in the applicable published Fair Market Rents (with an appropriate reduction in the adjustment where utilities are paid directly by the family). However, for such Contracts, it is expected that Public Housing Agencies (PHAs) will use the published Section 8 Annual Adjustment Factors as a guide in determining the reasonableness of owner's Contract Rents and the schedule of allowances for utilities and other services for tenant-paid utilities.

The new method of adjusting Contract Rents will be simpler for PHAs to administer since it will not be necessary to calculate the percentage change between applicable Fair Market Rent schedules, and further, the data used to update the Fair Market Rents and establish the Annual Adjustment Factors is generally the same. The final rule also emphasizes that annual adjustments are still subject to the rent reasonableness and Fair Market Rent limitations.

The revisions proposed to §§ 882.109(m) and 882.112(a) concerning Congregate Housing and security deposits will be addressed in the discussion of the October 21, 1977 proposed regulations below. The changes proposed to § 882.120 have been revised to provide that the rent adjustments for Recently Completed Housing are also based on the Section 8 Annual Adjustment Factors (24 CFR Part 888) and that all adjustments are subject to the Fair Market Rent limitations and rent reasonableness test.

A comment on the proposed § 882.205(b) stated that the language was not specific enough on multi-jurisdictional applications concerning which chief executive officers should be given the opportunity to comment. We have retained the original language which we believe to be sufficiently specific since it clearly states that the chief executive officers of "localities which are identified as primary areas from which families to be assisted will be drawn" are sent notifications. For example, where assistance to several counties is involved, not only the chief executive officers of the counties but of each jurisdiction within the counties, which is identified as a primary area on the application, will be notified of the application and given the opportunity to comment.

Several comments were received on the proposed revisions to § 882.209(a). Most comments suggested that we allow the PHA the flexibility of issuing either a 0-bedroom or 1-bedroom Certificate to elderly or handicapped individuals rather than requiring that a 0-bedroom Certificate be issued unless the PHA's program has no 0-bedroom units. We have determined that it is in the best interest of the government to provide the minimum subsidy necessary to house individuals adequately. Since the program does not provide for other family sizes to receive assistance for housing larger than necessary, it would not be appropriate to provide this additional assistance to single individuals. Since there

is provision for single individuals to receive a 1-bedroom Certificate in § 882.209(a)(2)(iv) if the PHA can document that local circumstances warrant such a variation, we have determined to adopt the proposed language in the final rule with the clarification that a 2-bedroom unit may be approved for an elderly, handicapped or disabled individual planning to live with an unrelated person essential to his or her care or well-being.

INTERIM RULE PUBLISHED JULY 6, 1977

The majority of the changes implemented by this rule deal with the elimination of Appendices I through V. No comments were received objecting to the deletions; therefore, Appendices I through V are deleted and Appendices VI and VII have been renumbered as I and II.

Several comments recommended adoption of the interim amendment to § 882.106(a)(4) which allows HUD field offices to authorize a PHA to approve Gross Rents up to 20 percent above the applicable Fair Market Rents for specific neighborhoods or to meet the unique needs of particular families. The Department has determined to further study the application of this provision and is therefore reserving a final decision on this issue and would take into consideration further public comments. We are publishing § 882.106(a)(4) as part of 24 CFR part 882; however, this publication does not affect its interim status.

No comments were received objecting to the elimination of the HUD form for lease approval and disapproval and we are, therefore adopting the interim rule revising § 882.210 as a final rule. Additionally, we are eliminating the requirement that the notification of lease approval be retained in the tenant file since a copy of the approved lease and Housing Assistance Payments Contract should suffice to indicate that the lease was approved.

PROPOSED RULE PUBLISHED OCTOBER 21, 1977; INDEPENDENT GROUP RESIDENCE DEFINITION

Several comments and suggestions were received with respect to the definition of Independent Group Residence in § 882.102. This definition has been revised and reorganized to include language which was contained in § 882.110(b)(1) of the proposed regulations concerning these Residences.

Several comments asked why publicly owned housing could not be utilized as an Independent Group Residence since some units of local government have purchased housing for this purpose. Another comment requested clarification as to whether or not all residents of an Independent Group Residence had to be Section 8 recipients. Numerous comments were also received with respect to the maximum number of individuals residing in an Independent Group Residence. It was suggested that a maximum of sixteen individuals was too restrictive and would exclude use of dormitories and hotels. Other comments noted that a number smaller than sixteen would be preferable although the proposed limitation did allow flexibility. In addition, several respondents incorrectly interpreted this restriction to apply to the number of people in an apartment complex or building rather than in the unit.

In response to these comments the definition of Independent Group Residence has been revised to delete the requirement of this type of housing be privately owned, and to restrict occupancy in a unit to groups of two to twelve individuals, not including Resident Assistant(s). The Department has determined that a limitation on the number of occupants is necessary and consistent with the objectives of deinstitutionalization of the elderly, handicapped and disabled requiring supportive services into community based residential settings. Since publication of the proposed regulations, the Department has determined that group homes for the handicapped constructed under Section 202 of the Housing Act of 1959 should not accommodate more than twelve residents, and these amendments to Part 882 are being conformed accordingly. In addition, a unit must house at least two occupants, not including Resident Assistant(s), to be considered an Independent Group Residence for purposes of this program.

The general exclusion of dormitories, hotels and rooming houses is intentional since facilities of this type are generally large enough to be institutional in nature and not representative of typical residential housing available in a community which is intended to be used for this aspect of the Section 8 program. Independent Group Residences are intended to provide a housing alternative to institutional care for handicapped and disabled persons who can reasonably be expected to advance to greater levels of independent living, and to provide suitable housing for the elderly who cannot live completely independent and would benefit from group interaction, but do not require the services typically provided in nursing homes.

The definition of Independent Group Residence has also been amended to allow elderly, handicapped, or disabled individuals not eligible for or not receiving Section 8 assistance to reside in the unit. This change will allow Certificate holders to reside in group homes which meet the program requirements for Independent Group Residences but which also have occupants not receiving Section 8 assistance. It will also allow an elderly, handicapped, or disabled person not receiving Section 8 assistance to move into a unit which qualifies as an Independent Group Residence when a vacancy occurs. The proposed definition has also been revised by deleting the specific discussion of supportive services now covered in § 882.109(n)(6), "Housing Quality Standards."

RESIDENT ASSISTANT

Several comments concerning the definition of Resident Assistant in Section 882.102 reflected a need to clarify what the responsibilities of the Resident Assistant are and whether a Resident Assistant is required in each Independent Group Residence. A few comments also questioned why the Resident Assistant could not be related by blood, marriage, or operation of law to the individual receiving Section 8 assistance.

The definition of Resident Assistant has been clarified to indicate that this individual lives in the Independent Group Residence and provides, on a daily basis, some or all of the types of supportive services listed in § 882.109(n)(6). However, the Housing Quality Standards for an Independent Group Residence do not require a live-in Resident Assistant, and similar to the concept of a Resident Manager, the term Resident Assistant only applies to individuals who live in the Independent Group Residences. It is acceptable for an Independent Group Residence not to have a live-in Resident Assistant.

With respect to the prohibition that the Resident Assistant not be related to the Section 8 recipients, the Department has determined that it would be in the public's best interest not to change this provision since it prevents potential program abuses resulting from providing rent free housing to ineligible family members subsidized in effect by the assisted family member. If a family member can provide the necessary supportive services to a handicapped or disabled person and the income of that family is within the income limits, that family may receive Section 8 subsidy as a family without being housed in an Independent Group Residence. Such an arrangement would be preferable to housing the family in an Independent Group Residence since the income of all family members would then be considered in establishing eligibility and the rent.

The proposed provisions regarding the income of the Resident Assistant and computation of the individual's contribution toward the rent have been moved to § 882.106(c), "Contract Rents."

SERVICE AGENCY

There were several comments regarding the proposed definition of Service Agency which provided that this organization determine and monitor the supportive service needs of occupants of Independent Group Residences. Several comments recommended that Service Agencies not be permitted to monitor the supportive services which they provide, and asked for clarification as to whether PHAs could function as Service Agencies, and whether Service Agencies could own or sublease an Independent Group Residence. Comments also recommended that the Service Agency be approved and monitored by an appropriate department of the State, such as the Department of Human Resources or Department of Mental Health and Mental Retardation, rather than by the PHA, and that a written contract with respect to the services be required between the PHA and the Service Agency.

The definition of Service Agency in § 882.102 has been revised accordingly to clarify that a Service Agency may own or sublease an Independent Group Residence. The PHA administering the Housing Assistance Payments Contract is prohibited from providing management or supportive services in § 882.117, "Responsibilities of the Owner." It is anticipated, however, that this section will soon be revised to permit PHA management responsibilities under certain circumstances. In addition, the proposed regulations have been revised to require that the State, rather than the PHA, determine that the Service Agency is qualified and to clarify that the Service Agency may perform direct outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance.

The recommendation for a written contract has also been accepted; § 882.210(f), "Request for Lease Approval," and § 882.109(n), "Housing Quality Standards," have been revised to require that the lease incorporate by reference the supportive services to be provided in accordance with the written Service Agreement provided by the State between the Owner and the Service Agency and/or other entities providing these services. If the Service Agency and/or other entity is providing services and also acting as lessor, a separate Service Agreement is not necessary and the supportive services to be provided will be incorporated into the lease and the services provisions will be approved by the State. In addition, Service Agencies are prohibited from monitoring services which they provide pursuant to § 882.109(n)(6). The State and PHA do the monitoring.

The Department recognizes the inherent difficulties in providing "continuous supportive services" over extended time periods. To address this situation, PHAs are strongly encouraged to provide support and incentives to ensure the continued stable operation of individual Independent Group Residences. Such support may include:

1. Subcontracting with Service Agencies for outreach activities to owners and eligible individuals in locating appropriate applicants and dwellings for Independent Group Residences. This may involve the PHA paying for such services from funds received as preliminary fees for administration, and

2. Providing assistance to Service Agencies in locating and obtaining support services or providing administrative support as appropriate.

FINDERS KEEPERS POLICY AND MOBILITY

Several comments were also received regarding the advantages and disadvantages of providing the subsidy to the Independent Group Residence or to the Section 8 recipient. Consistent with the Section 8 Existing Housing Program's "finder-keepers" policy which allows Certificate Holders to select the housing unit of their choice, we are retaining the provision in § 882.103, "Finders-Keepers Policy," which will provide the subsidy to the individual. In this way, an individual will be able to leave the Independent Group Residence whenever he or she chooses to move to another unit, such as a unit where supportive services are not provided or to an Independent Group Residence providing less supervision.

To allow mobility, § 882.209, "Certificates of Family Participation," is being revised to require that the PHA issue a 0-bedroom Certificate for each individual who wishes to reside in an Independent Group Residence, and that separate leases and Housing Assistance Payments Contracts also be executed for each such individual. Since mobility opportunities for individuals in Independent Group Residences may create problems in operating Group Residences, §§ 882.102 and 882.106(c) have also been revised to allow individuals not receiving Section 8 assistance to reside in Independent Group Residences to minimize the financial impact of Section 8 recipients moving and the need for relocation of the remaining members of the group in accordance with § 882.213, "Overcrowded or Under Occupied Units." In addition, § 882.209, "Certificates of Family Participation," of the final rule requires that if a Section 8 recipient moves from an Independent Group Residence, PHAs must give a preference in issuing a Certificate to an applicant who has indicated the desire to reside in an Independent Group Residence. Use of this preference is subject to the availability of funds for an appropriately sized unit, and the Certificate holder does not have to move into an Independent Group Residence in which a vacancy has occurred. Although this change does not guarantee that a new Section 8 Certificate holder will replace the Section 8 recipient who moved, it does address the concerns expressed by both sponsors and potential providers of support services about the viability of Independent Group Residences. This issue is discussed in more detail in the Section of the Preamble entitled "Overcrowded or Under Occupied Units."

FAIR MARKET RENTS

A large number of comments were received in response to the Fair Market Rent schedule applicable to Independent Group Residences which was contained in § 882.110 of the proposed regulations. Numerous comments objected that the proposed regulation would encourage Independent Group Residences consisting of seven or more bedrooms since substantially higher rents were allowed for these larger units. It was suggested that the rents applicable to efficiency or 1-bedroom units should be allowed for each individual or each bedroom in an Independent Group Residence, regardless of size.

Several comments were also received suggesting that the cost of supportive services should be included in the rent and thus funded through Section 8 housing assistance. In contrast, a few comments supported the restriction that housing funds could not be used to subsidize social service programs since such use would be short-lived, cause problems in responsibility and accountability, and would defeat long-term strategies of cooperation between housing and service agencies.

Two additional comments noted that based on an eligible individual's income from Supplemental Security Income (SSI) benefits, ten to twelve individuals residing in a 6-bedroom Independent Group Residence in certain localities would not receive any housing subsidies since their collective contribution towards the rent would exceed the maximum Fair Market Rent allowable. This may also occur in group homes housing two individuals in each bedroom in localities where the SSI payments are supplemented by the State and/or the housing costs are relatively inexpensive. In such cases, since the individuals can afford the rent collectively without subsidy, with each individual contributing up to 25 percent of his or her income toward the rent, there is no need for subsidizing their rent.

The Fair Market Rents for the Section 8 Existing Program represent the rents necessary to lease privately-owned existing, standard rental housing of a non-luxury nature. This program is not intended to provide the rents necessary to purchase, construct, or extensively rehabilitate housing, and leasing of Independent Group Residences will depend on the availability of rental apartments and single-family homes of appropriate size and quality within the Fair Market Rent limitations.

Although the Department recognizes that all or some of the types of supportive services listed in § 882.109(n)(6) may be necessary and required in Independent Group Residences, it is not considered appropriate to fund such services with Section 8 housing assistance payments. The regulations, therefore, retain the requirement that the Fair Market Rents be based on the unit size, i.e., the number of bedrooms within the unit, including one bedroom for a live-in Resident Assistant(s). To provide a 0-bedroom rent per individual or per bedroom would result in rents which would be excessive for the housing provided and would, therefore, result in the funding of services for residents. It is possible, however, for Area Offices to approve Gross Rents of up to 20 percent above the published Fair Market Rents on a case-by-case basis to meet the unique housing needs of specific individuals. If such an approval is authorized based on the needs of one or more individuals, a Gross Rent up to 20 percent above the applicable published Fair Market Rent may be approved by the PHA for an Independent Group Residence. It is anticipated that this allowable increase will be sufficient to cover any increased maintenance or management expenses associated with Independent Group Residences.

In addition, we have eliminated the different Fair Market Rent calculation systems for units of seven or more bedrooms, and Fair Market Rents for 7-bedroom units and larger will be established.

The provisions regarding Fair Market Rents have been transferred to § 882.106(c), "Contract Rents," and provides that each individual be issued a 0-bedroom Certificate and that the housing assistance payment on his or her behalf be based on a prorata share of the Gross Rent for the unit which must be within the Fair Market Rent limitations for the unit size. To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other than the Resident Assistant(s), if any, who occupies no more than 1-bedroom.

The Department realizes that the available local and federal funding resources for supportive services in Independent Group Residences are limited. However, HUD's role with respect to subsidized housing has traditionally been to provide decent, safe and sanitary housing to lower income families at a rent they can afford. If supportive services were to be included as a rental cost, the number of units which could be assisted under the Section 8 program would be reduced. We, therefore, do not consider it feasible or appropriate to fund services within the limited Section 8 resources. We are, however, initiating discussions with the Department of Health, Education and Welfare concerning possible funding sources for supportive services.

Congregate Housing

Several comments were received concerning the proposed Housing Quality Standards for Congregate Housing. Concern was expressed that the refrigerator, central dining, and bathroom requirements were too restrictive. It was recommended that the regulations be revised to allow two units to share a bathroom; to permit the central dining facility to be located in the apartment complex rather than in each building, and not be restricted to the exclusive use of the residents since this would prohibit operating meal programs under Title VII of the Older Americans Act; and to delete the requirement that a refrigerator be provided in each unit if three meals a day are provided or the residents have access to an adequate number of community refrigerators.

Section 882.109(m) which contains the Housing Quality Standards for Congregate Housing has been revised to allow the central dining facility to be located within the building or housing complex and to require that the central dining facility be for the primary use of the residents and of sufficient size to accommodate the residents. The requirements that each unit contain a bathroom and refrigerator have not been deleted since generally congregate units are self-contained apartments with a limited kitchen area and from one to three meals a day are prepared and served in a central dining facility. An individual refrigerator in each unit is desirable so residents can prepare meals and/or snacks and refrigerate medicines, if necessary, and perishable food items. Since congregate units most closely resemble efficiencies and 1-bedroom units, these Fair Market Rents are applicable to congregate housing. By removing the refrigerator and bathroom requirements, you would no longer have individual apartments but rather a group home arrangement which is covered by Independent Group Residences.

Independent Group Residence Housing Quality Standards

Concerning the physical requirements for Independent Group Residences, several comments were received as follows: (1) There is no need to post an emergency exit plan and fire inspection schedule; (2) Independent Group Residences should be in community based residential settings, similar in size and appearance to housing generally found in the neighborhood, and accessible to amenities and supportive services; (3) Independent Group Residences should contain adequate social and/or recreational space; (4) it should be clarified that the living room, bathroom, etc., must be in the unit rather than just accessible; (5) counseling services should be included in the list of supportive services; (6) it should be clarified that all of the listed supportive service examples are not mandatory; (7) occupancy should not be restricted to a maximum of two persons per bedroom; (8) limitation of one bathroom for four persons will eliminate use of dormitories and some houses; (9) controls should be developed to prevent an overconcentration of Independent Group Residences in any particular block or neighborhood; (10) all Independent Group Residences should be accessible to the handicapped regardless of whether there are any immediate plans to house handicapped individuals; and (11) the requirement of a continual planned program of supportive services should be clarified or deleted.

The recommendations described in comments 1-6 are being incorporated into the regulations in § 882.109(n), "Housing Quality Standards." The Department does not agree that more than two persons should be permitted to share a bedroom; this limitation applies to all HUD rental housing programs. With respect to the one to four ratio of sanitary facilities to occupants, the proposed standard is intended to make available an adequate number of facilities which can be used in privacy. Since only three comments indicated this requirement might pose a problem concerning available housing stock and one comment recommended that only two persons be allowed to share sanitary facilities, the Department has decided not to change this requirement.

With respect to developing controls preventing an overconcentration of Independent Group Residences in any one area, the Department agrees in principle with this recommendation, yet feels the program design encourages scattered site housing and implementation of this recommendation

could adversely restrict an individual's choice of housing. Similarly, the Department has not accepted the recommendation that all Independent Group Residences, regardless of whether the occupants are physically handicapped, be accessible to the handicapped. However, physical accessibility is a requirement when appropriate to the needs of the occupants. Implementation of this requirement for all Independent Group Residences would severely restrict the existing housing supply available and suitable to be used for this purpose by elderly, disabled and handicapped individuals who do not need any physical modifications to the unit.

With respect to comments concerning the need for a continual planned program of supportive services, the Independent Group Residences regulations were developed to allow eligible individuals who require a supervised group living environment to receive Section 8 assistance. Elderly, handicapped, and disabled individuals capable of living independently without supportive services are eligible for the Section 8 program and do participate in large numbers. The Department, however, believes it is essential that, if supportive services are required, high quality services appropriate to the needs of the Section 8 recipients be in fact provided. Therefore, the need for and provision of a planned program of continual services is the primary characteristic of Independent Group Residences, and special regulation provisions have been developed to allow these individuals to participate in the Section 8 program in a group situation and still be determined financially eligible on an individual basis.

Licensing

Numerous comments were received with respect to the proposed requirement in § 882.109(n), "Housing Quality Standards," that Independent Group Residences be licensed by the State, or local agencies created by the State, to establish, maintain, and enforce appropriate standards. Comments expressed the concern that not all States have licensing agencies for group homes and it was recommended that Independent Group Residences be (1) licensed, or certified, as required by State law; (2) approved by the PHA or Service Agency at least on a temporary basis; (3) licensed, certified or otherwise approved by the State; or (4) licensed, regulated or operated by the State, or operated by a vendor under contract with the State. Another comment recommended that the Service Agency be licensed or authorized by licensing agencies.

The proposed regulations have been revised to require that Independent Group Residences be licensed, certified or otherwise approved in writing by the State. The Department believes it is essential that the type, frequency and the quality of services be monitored on a continual basis to ensure that residents of Independent Group Residences have a suitable living environment, and further feels that State approval is the most appropriate quality monitoring mechanism. It is anticipated that States will utilize standards similar to those which are required as a result of 45 CFR Parts 228 and 229 (Social Services Programs for Individuals and Families, Title XX and Standard Setting Requirements for Medical and Nonmedical Facilities Where SSI Recipients Reside) which implement Public Law 94-556 and which were published on January 31, 1978 by the Department of Health, Education and Welfare. Section 229.10 of these regulations requires States "to designate one or more State or local authorities to establish and enforce standards for non-medical, residential facilities where significant numbers of SSI recipients reside or are likely to reside."

Security Deposit

Several comments suggested that the maximum allowable security deposit be increased to one month's Contract Rent or the amount normally collected by the owner so that this aspect of the program would conform with private market practices. It was further suggested that, as the option of the family, the PHA be allowed to advance a portion of the security deposit to the owner and then collect this amount from the family in affordable installments. This procedure would reduce the PHA's involvement in determining the amount of reimbursement to an owner for unpaid rent or damages when the family vacates the unit since the full security deposit would have been paid.

Other comments recommended that (1) the $50 minimum be increased to at least $100; (2) the security deposit be a flat amount such as $50 to simplify the bookkeeping requirements of PHA's and owners; (3) the security deposit be limited to the amount the owner currently charges; (4) the current security deposit provision not be revised at all; (5) a $50 minimum is unfair since it applies only to families with the lowest incomes; (6) the proposed provision may be in conflict with State law; for example, in Connecticut the owner may not collect an amount in excess of twice the tenant's monthly rent; and (7) it is unfair to allow families leasing in-place to pay higher security deposits than those families moving to a new unit. In addition, several comments supported the adoption of the proposed security deposit provision without change.

Although the Department recognizes that allowing a security deposit in an amount up to one month's Contract Rent could encourage increased owner participation, this recommendation has not been adopted since it could have the effect of excluding very low-income families from participating in the program due to a lack of funds. Additionally, any PHA advance payment system would require PHAs to maintain a bookkeeping and collection system which is not now required and would be unacceptable to many PHAs.

The provision for a $50 minimum security deposit for new leases has been retained in Section 882.112, "Security and Utility Deposits." However, this provision has been clarified to state that the owner does not have to collect a security deposit and that the *maximum* amount which can be collected from the family is the higher of $50 or one month's Gross Family contribution provided that this amount does not exceed the maximum amount allowed by State or local law. The regulations do not prohibit the owner from collecting an amount less than $50 or one month's Gross Family contribution if desired. However, owners may find that families do not take as good care of their units where they have no financial reason to do so. The recommendation that families leasing in-place not be excepted from the maximum security deposit provision has not been accepted since the partial refunding of security deposits has been found by PHAs to be a disincentive for owner participation; families voluntarily paid the requested amount previously; and this provision will not impose a financial hardship. In addition, the recommendation for a flat fee security deposit has not been adopted since the Gross Family contribution may exceed this amount and many owners would prefer to collect the higher amount so that families will have a greater interest to maintain the unit in good condition.

Use of Unit Inspection Booklet by Family and Owners

One comment recommended that the family continue to be required to use the inspection booklet since this process helped eliminate unacceptable units and placed a desirable responsibility on the Certificate holder. Three comments supported the deletion of this requirement. Based on these comments the Department is adopting the change as published for comment in §§ 882.209(b)(4) and 882.210(a)(2). The family still must be advised of the Housing Quality Standards to be used in selecting a unit during the briefing session, and the PHA may continue to provide the family with an inspection form. This regulation change only de-

letes the requirement that the family and owner certify on a HUD form that the unit meets the physical standards of the program.

OVERCROWDED OR UNDER OCCUPIED UNITS

Several comments objected to the proposed revision to Section 882.213 requiring a family to relocate to a smaller unit, in accordance with the lease terms and with the assistance of the PHA, if the family size was reduced to the extent that they were in a unit larger than appropriate and the Gross Rent exceeds the Fair Market Rent for the unit size appropriate for the family size. It was pointed out that in an Independent Group Residence it could be anticipated that individuals would move to a more independent living environment or be hospitalized, and the remaining members of the group would then also have to move since they would under occupy the unit. Another comment expressed concern that the PHA could terminate assistance without due process if the family rejected a replacement unit without good reason.

The requirement that a family be required to move when a change in family composition results in the remaining members of the family occupying a unit larger than appropriate and the Gross Rent exceeds the Fair Market Rent for the unit size appropriate for the family has been retained since without this requirement a family would receive excessive rental subsidies. The regulations have been revised to clarify that the PHA shall issue such a family a new Certificate and that termination of assistance will occur only when this Certificate has expired and the PHA has assisted the family in locating a suitable replacement unit which the PHA judges to be acceptable.

With respect to Independent Group Residences, the Department feels that the changes made to § 882.102, "Definition of Independent Group Residence," § 882.106, "Contract Rents," and § 882.209, "Certificates of Family Participation," will prevent the noted problems since individuals will be issued separate Certificates and execute separate leases; there will be a separate HAP Contract for each individual; vacancies can be marketed to other individuals whether or not they are to receive Section 8 assistance; and the PHA will give a preference in issuing Certificates to possible replacement individuals. In addition, every change in composition of the members occupying an Independent Group Residence will not necessitate a move to a different sized unit. For example, if eight Section 8 recipients occupy a 4-bedroom unit, it would be permissible under the program's occupancy standards for up to four individuals to vacate the unit and the other four individuals to remain in the unit occupying a private bedroom each. However, if five individuals were to vacate this 4-bedroom unit, the remaining three individuals may have to move to a smaller unit unless a suitable replacement tenant, who may or may not receive Section 8 assistance, can be located by the Service Agency or the PHA who will make the vacancy known to eligible Certificate holders. This move would be necessary if a replacement tenant does not move in and if (1) the Fair Market Rent for a 3-bedroom unit (the maximum size unit 3 persons are eligible for) is less than the Gross Rent currently being charged for the 4-bedroom unit; (2) the leases can be terminated in accordance with their terms; and (3) the remaining members of the group have found a suitable replacement unit with the assistance of the PHA. It is therefore anticipated that this provision of the regulations rarely will have an adverse effect on the residents of an Independent Group Residence.

Other changes to and comments on the proposed regulations are as follows:

1. Section 882.102, "Definition": (1) the illustrative description of supportive services is being deleted from the definition of Independent Group Residences and moved to § 882.109, "Housing Quality Standards"; (2) information with respect to the unit size, Certificates, Gross Family Contribution, Leases and Contracts is being deleted from the definition of Resident Assistant and moved to § 882.106, "Contract Rents"; and (3) definitions of Unit and Service Agreement are being added.

2. Section 882.110, "Types of Housing": (1) typographical errors are being corrected with respect to the term Independent Group Residences; (2) requirements concerning the physical and mental capabilities of residents of an Independent Group Residence are being moved to § 882.102; (3) facilities providing continual psychiatric services are being added as an example of ineligible types of housing; (4) the Fair Market Rent information for Congregate Housing and Independent Group Residences is being moved to § 882.106, "Contract Rents;" and (5) Congregate Housing is being deleted as an example of the type of housing which can be used as an Independent Group Residence since it is unlikely that 0-bedroom and 1-bedroom units, the typical bedroom sizes in Congregate Housing, could accommodate groups of two to twelve individuals, which is the size group eligible to live in an Independent Group Residence.

3. Several comments were received requesting clarification of program details contained in the sections of the Section 8 Existing Housing Program regulations not published in the October 21, 1977 proposed rule, or in 24 CFR Part 812, "Definition of Family and Other Related Terms; Occupancy by Single Person" or 24 CFR Part 889, "Determination of Income for Eligibility and Gross Family Contribution." Persons interested in further information on 24 CFR Parts 812, 882, or 889 should contact either the PHA administering the program in their locality or the local HUD field office. However, since most of the questions were raised by organizations interested in developing an Independent Group Residence program, Section 8 program definitions of elderly, handicapped and disabled individuals as set forth to Part 812 are restated here for their information.

"Elderly family." "Elderly Family" means a family whose head or spouse or whose sole member is at least sixty-two years of age, or a Disabled Person as defined in this section or a Handicapped Person as defined in this section, and may include two or more elderly, Disabled or Handicapped Persons living together, or one or more such persons living with another person who is determined to be essential to his or her care and well being."

"Handicapped person." "Handicapped Person" means a person having a physical or mental impairment which (1) is expected to be of long-continued and indefinite duration, (2) substantially impedes his or her ability to live independently, and (3) is of such a nature that such ability could be improved by more suitable housing conditions."

"Disabled person." "Disabled Person" means a person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423) or in section 102(b)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 6001(7))." Section 223 of the Social Security Act defines disability as:

(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

Section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 defines disability as: "* * * a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary (of Health, Education, and Welfare) to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual."

4. Section 882.105 has been modified to incorporate by reference the provisions of Part 889, Determination of Income for Eligibility and Gross Family Contribution. Part 889 establishes the definition of Annual Income and the formula for computation of Gross Family Contribution. Section 882.114 is being deleted since it is now redundant.

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

Accordingly, Part 882 is revised to read:

Part 882—Section 8 Housing Assistance Payments Program—Existing Housing

Subpart A—Applicability, Scope and Basic Policies

Sec.
882.101 Applicability and scope.
882.102 Definitions.
882.103 "Finders-Keepers" policy.
882.104 Maximum total ACC commitment and ACC reserve account.
882.105 Housing assistance payments to owners.
882.106 Contract rents.
882 107 Term of ACC, lease, and housing assistance payments contract.
882 108 Rent adjustments.
882.109 Housing quality standards.
882.110 Types of housing.
882.111 Equal opportunity requirements.
882.112 Security and utility deposits.
882.113 Establishments of income limit schedules; 30 percent occupancy by very low-income families.
882.114 Reserved.
882.115 Rent reduction incentive.
882.116 Responsibilities of the PHA.
882.117 Responsibilities of the owner.
882.118 Responsibility of the family.
882.119 Single ACC.
882.120 Recently completed housing.
Sec.
882.121 HUD administration of programs under this part.
882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on September , 1978. (Insert date)

Subpart B—Project Development and Operation

882.201 Allocations of contract authority to field offices.
882.202 Determination of number and types of units to be assisted.
882.203 Invitations for existing housing program applications.
882.204 Submission of applications.
882.205 Processing of applications.
882.206 Annual contributions contract; schedule of leasing.
882.207 Public notice to lower-income families; waiting list.
882.208 Activities to encourage participations by owners and others.
882.209 Certificates of family participation.
882.210 Request for lease approval.
882.211 Maintenance, operation and inspections.
882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.
882.213 Overcrowded or under occupied units.
882.214 Adjustment of allowance for utilities and other services.
882.215 Eviction.
882.216 Inapplicability of low-rent public housing model lease and grievance procedures.
882.217 HUD review of contract compliance.
882.218 PHA reporting requirements. [Reserved].

APPENDICES

Appendix I—Required lease provisions.
Appendix II—Prohibited lease provisions.

AUTHORITY: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).

Subpart A—Applicability, Scope and Basic Policies

§ 882.101 Applicability and scope.

(a) *General.* (1) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families leasing Existing Housing pursuant to the provisions of section 8 of the U.S. Housing Act of 1937 ("Act").

(2) For the purpose of this Part, "Existing Housing" means housing that is in Decent, Safe, and Sanitary condition except that it does not include housing: (i) Which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under 24 CFR, Part 800, 801, 880, or 881, or (ii) which is owned by the PHA administering the ACC under this Part, or (iii) which is subsidized under other provisions of the Act. Occupancy of housing which requires repairs in order to be made Decent, Safe, and Sanitary may be assisted under this Part only after such repairs have been made. (See also § 882.210(d)).

(b) *Conversion of Section 23 Housing Projects.* (1) No HUD policy or procedure shall affect prior rights of an owner or tenant under a lease entered into under section 23 of the Act.

(2) PHAs are encouraged to develop plans for the orderly conversion of their section 23 housing to the section 8 program.

(3) Conversions should be accomplished so as to preclude the eviction of families receiving assistance under the section 23 program.

(4) Housing under ACCs implementing the HUD Experimental Housing Allowance Program shall not be subject to the provisions of this paragraph (b).

(5) With respect to section 23 housing other than new construction and substantial rehabilitation:

(i) Where section 23 housing is to be converted to section 8, HUD will, to the extent of available contract authority, approve one section 8 unit for each section 23 unit converted. Where section 23 units are not converted, the following provisions of this paragraph (b)(5) shall apply.

(ii) Any increases in rents and/or operating costs for occupied units must be funded by the elimination of units authorized under the section 23 ACC but not leased; section 23 ACC amounts shall not be increased, except under special circumstances as authorized by HUD.

(iii) No leases for additional units shall be entered into. Lease renewals and extensions may be entered into only with respect to occupied units and units which are to be reoccupied within 30 days, but the terms of such lease renewals may not extend beyond June 30, 1978, except under special circumstances as authorized by HUD, and then only until June 30, 1979.

(6) Section 23 Existing Housing projects for which ACCs were approved, but not executed, by December 31, 1974, shall be converted to section 8 (even if an ACC was executed subsequent to December 31, 1974), unless the PHA notifies HUD that it would prefer to retain the project under section 23. In the latter case, a section 23 ACC shall be executed, but the other provisions of this paragraph (b), shall be applicable, except that for initial leasing the provisions of paragraph (b)(5)(iii) shall not apply.

(7) Any completed (legally available for occupancy) Section 23 new construction or substantial rehabilitation project may be converted to Section 8 under contractual arrangements for such term and on such conditions as may be agreed to by all the parties and approved by HUD. The applicable Fair Market Rents shall be those for

Existing Housing under this part, except that for any unit which was completed or substantially rehabilitated no more than six years prior to the leasing thereof under this Part, the applicable rent shall be determined in accordance with Section 882.120(b).

§ 882.102 Definitions.

ACC Reserve Account. The account established and maintained in accordance with § 882.104.

Allowance for Utilities and Other Services ("Allowance"). An amount determined by the PHA as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

Annual Contributions Contract ("ACC"). A written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the Act.

Certificate of Family Participation ("Certificate"). A certificate issued by the PHA declaring a Family to be eligible for participation in this program and stating the terms and conditions for such participation.

Congregate Housing. See Section 882.109(m).

Contract. See definition of Housing Assistance Payments Contract.

Contract Rent. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe, and Sanitary. Housing is Decent, Safe, and Sanitary if the requirements of § 882.109 are met.

Eligible Family ("Family"). A family (including those covered by the definition of "Family" in Part 812 of this Chapter) which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this Part.

Existing Housing. See § 882.101 (a)(2).

Fair Market Rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, Decent, Safe, and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units of varying sizes (number of bedrooms) and types (e.g. elevator, non-elevator).

Gross Family Contribution. The portion of the Gross Rent payable by an Eligible Family (i.e., the difference between the amount of the Housing Assistance Payment payable on behalf of the Family and the Gross Rent), before deduction of Rent Credit, where applicable.

Gross Rent. The Contract Rent plus any Allowance for Utilities and Other Services.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payments Contract ("Contract"). A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an Eligible Family.

Housing Assistance Payment on Behalf of Eligible Family. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD. (See § 882.114).

Housing Assistance Plan

(1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Grant Program as part of the block grant application, in accordance with the requirements of § 570.303(c) of the Community Development Block Grant regulations (24 CFR 570), and approved by HUD;

(2) A Housing Assistance Plan meeting the requirements of § 570.303(c), submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

HUD. The Department of Housing and Urban Development or its designee.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

Independent Group Residence. A dwelling unit for the exclusive residential use of two to twelve elderly, handicapped or disabled individuals (excluding live-in Resident Assistant(s) if any) who are not capable of living completely independently and require a planned program of continual supportive services. (See Section 882.109(n)(6).) Individuals residing in an Independent Group Residence and receiving Section 8 assistance shall not require continual medical or nursing care and shall be ambulatory or not confined to a bed continuously and capable of taking appropriate actions for their own safety under emergency conditions.

Lease. A written agreement between an Owner and an Eligible Family for the leasing of an Existing Housing unit in accordance with the Contract, which agreement is in compliance with the provisions of this Part.

Lower-Income Family. A Family whose Income does not exceed 80 percent of the median Income for the area as determined by HUD with adjustments for smaller or larger Families, except that HUD may establish Income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low Incomes, or other factors.

Owner. Any person or entity, including a cooperative, having the legal right to lease or sublease Existing Housing.

Public Housing Agency ("PHA"). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families.

Recently Completed Housing. See § 882.120.

Rent Credit. See § 882.115.

Resident Assistant. A person who lives in an Independent Group Residence and provides on a daily basis some or all of the necessary support services to elderly, handicapped and disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or well being. A Resident Assistant shall not be related by blood, marriage or operation of law to the individuals receiving Section 8 housing assistance nor contribute a portion of his or her income or resources towards the expenses of these individuals. (See Sections 882.109(n) and 882.106(c).)

Secretary. The Secretary of Housing and Urban Development.

Service Agency. A public or private non-profit organization which is recognized by the State as qualified to determine the supportive service needs of individuals who will reside in Independent Group Residences. The service agency may perform outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance, provide all or a portion of the supportive services and may identify and coordinate appropriate local, public or private resources to furnish these services. The Service Agency may own or sublease an Independent Group Residence.

Service Agreement. A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See Sections 882.109(n)(6) and 882.210(f)(2).)

Unit. Residential space for the private use of a Family (including individuals who comprise a Family in accordance with 24 CFR 812), such as an

apartment, house, or Independent Group Residence, which contains a living room, kitchen area, bathroom(s) and bedroom(s). However, a congregate housing unit need not contain a kitchen area since central dining facilities are available within the building or housing complex, and a 0-bedroom unit may have a combined living/bedroom area. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from 0-bedroom to 6-bedrooms.

Very Low-Income Family. A Family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 882.103 "Finders-Keepers" Policy.

(a) A holder of a Certificate of Family Participation shall be responsible for finding an Existing Housing unit suitable to the holder's needs and desires in any area where the PHA determines that it is not legally barred from entering into Contracts. A holder of a Certificate may select a dwelling unit which the holder already occupies if the unit qualifies as Existing Housing. Upon request, the PHA shall provide assistance in finding units for those Families who, because of age, handicap, or other reasons, are unable to locate approvable units and shall provide such assistance where the Family alleges that illegal discrimination is preventing it from finding a suitable unit. Any such assistance shall be in accordance with the PHAs approved equal opportunity housing plan (see § 882.204(b)(1)).

(b) Neither in the provision of assistance to any Family in finding units nor by any other action shall the PHA directly or indirectly reduce the Family's opportunity to choose among the available units in the housing market. The provisions of this section shall apply to all holders of Certificates including those who are residing in or may wish to reside in Congregate Housing or Independent Group Residences.

(c) PHAs are encouraged to promote greater choice of housing opportunities by: (1) seeking participation of owners in any area in which the PHA has determined that it is not legally barred from entering into Contracts, (2) advising Families of their opportunity to lease housing in all such areas, (3) cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another and (4) developing administrative arrangements with other PHAs in order to permit Certificate Holders to seek housing in the broadest possible area. In any geographic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units.

§ 882.104 Maximum total ACC commitments and ACC reserve account.

(a) *Maximum Total ACC Commitment.* The maximum total annual contribution that may be contracted for in the ACC for Existing Housing shall not exceed the total for all the units of the Fair Market Rents or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The fee for the regular costs of PHA administration and the HUD-approved preliminary costs shall be payable out of this total. With the approval of the Assistant Secretary for Housing Production and Mortgage Credit, an amount for the fee for the regular costs of PHA administration may be added to this total in cases where the need for the additional funds is evident from the estimates of required annual contributions submitted on the prescribed forms pursuant to § 882.204(b)(2).

(b) *ACC Reserve Account.* An ACC reserve account will be established and maintained, in an amount determined by the Secretary, consistent with his responsibilities under section 8(c)(6) of the Act. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

(1) Housing assistance payments,

(2) the amount of the fee for regular PHA costs of administration; and

(3) Other costs specifically authorized or approved by the Secretary.

(c) In addition, the ACC will provide that HUD will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to assure availability of funds to cover increases in housing assistance payments on a timely basis as a result of increases in Contract Rents or decreases in Family Incomes.

§ 882.105 Housing assistance payments to owners.

(a) *General.* Housing assistance payments shall be paid to an Owner in accordance with his Contract for the dwelling unit under lease by an Eligible Family. These housing assistance payments will cover the difference between the Contract Rent and the portion of said rent payable by the Family as determined in accordance with Part 889 and § 882.115. No section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives are considered rental housing rather than owner-occupied housing for this purpose.

(b) *Vacated Units.* (1) If an Eligible Family vacates its unit in violation of the provisions of the Lease or tenancy agreement, the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days or the expiration or other termination of the Lease or tenancy agreement, whichever comes first; provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct; and provided further, that if the vacancy is the result of action by the Owner, the Owner shall not receive any payment under this paragraph if his action was in violation of the Lease or the Contract or any applicable law or if the Owner failed to comply with § 882.215.

(2) The Owner shall not be entitled to any payment under this paragraph (b) unless he: (i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, (ii) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on his waiting list, if any; requesting the PHA and other appropriate sources to refer eligible applicants; and advertising the availability of the unit and (iii) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(3) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this paragraph (b) to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 882.112).

§ 882.106 Contract rents.

(a) *Fair Market Rent Limitation.*— (1) The Gross Rent for any Existing Housing unit approved pursuant to § 882.210(b) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

(2) For up to 20 percent of the units authorized by an ACC, the PHA may approve Gross Rents on a unit-by-unit basis which exceed the applicable Fair Market Rents by up to 10 percent. The PHA may, in addition, exercise such authority with respect to more than 20 percent of the units authorized by an ACC if HUD approves such extension of the PHAs authority. In considering whether to grant such approval,

HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated programs costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum Gross Rents for all units of a given size or type (elevator/nonelevator) of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that (i) special circumstances apply to units of a given size or type limited to a specified neighborhood, (ii) by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and (iii) the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. On the basis of a showing by the PHA that (iv) the leasing of a certain unit is necessary to meet the unique needs of a particular Family, (v) the reasonable Gross Rent for the unit is as high as 20 percent above the applicable Fair Market Rent, and (vi) the unit cannot be rented for less, HUD may authorize the PHA to approve a Gross Rent for that unit up to 20 percent above the applicable Fair Market Rent. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section except for the last sentence thereof.

(b) *Rent Reasonableness Limitation.* (1) The PHA shall certify for each unit for which it approves a lease that the Contract Rent for such unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance service of such unit, and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) For a rent controlled unit, comparable units shall be those which are rent controlled; for a unit which is not subject to rent control, comparable units shall be those which are not rent controlled.

(3) The PHA shall maintain for three years all certifications and relevant documentation under this paragraph (b) for inspection by HUD.

(c) *Congregate Housing and Independent Group Residences.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for 0-bedroom units, except that, if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2)(i) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(ii) The PHA shall issue a 0-bedroom Certificate of Family Participation for each eligible individual who will reside in an Independent Group Residence and a separate Lease and Contract shall be executed. A Resident Assistant(s) who resides in the unit may be considered a Family member for purposes of determining the appropriate unit size. However, the Resident Assistant's income shall be disregarded for purposes of determining the Gross Family Contribution and the Family's income for eligibility for housing assistance. Notwithstanding the requirements specified above, if an eligible individual wishes to move, the PHA may then issue that individual a 1-bedroom Certificate, if appropriate, in accordance with § 882.209(a)(2).

(3) For purposes of determining the housing assistance payment for each individual participating in the Section 8 Existing Program, the PHA shall allocate the Gross Rent, which is subject to paragraphs (a) and (b) of this section, among the total number of occupants in the Independent Group Residence in an equitable manner which ensures that the Gross Rents of occupants (other than the resident Assistant(s), if any, occupying no more than 1-bedroom) not receiving Section 8 assistance are not subsidized.

To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other than the Resident Assistant(s), if any, who will occupy no more than 1-bedroom. For example, if three Section 8 recipients and a Resident Assistant reside in a 4-bedroom unit, the housing assistance payment for each of the Section 8 recipients would be based on ⅓ of the Gross Rent. Likewise, if two Section 8 recipients, a Resident Assistant and a person not receiving Section 8 assistance reside in a 4-bedroom unit, the housing assistance payments for each of the Section 8 recipients would be based on ⅓ of the Gross Rent; the person not receiving Section 8 assistance would pay ⅓ of the Gross Rent. However, if a Section 8 recipient, a person not receiving Section 8 assistance, and two Resident Assistants each occupy a bedroom in a 4-bedroom unit, the housing assistance payment for the Section 8 recipient would be based on ⅓ of the Gross Rent and one of the Resident Assistants would be considered a person not receiving Section 8 assistance since this section prohibits Section 8 assistance being contributed toward more than 1-bedroom for the housing costs of the Resident Assistant(s). In all of these examples the Fair Market Rent for the Independent Group Residence would be that of a 4-bedroom unit.

(4) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining and sanitary facilities and the provision of special amenities or maintenance and/or management services. The Contract Rent shall not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or serving food.

§ 882.107 Term of ACC, lease, and housing assistance payments contract.

(a) *Term of ACC.* The term of the ACC shall be for five years.

(b) *Term of Lease and of Housing Assistance Payments Contract.* The Lease shall be for not less than one year nor more than three years but may contain a provision permitting termination upon 30 days advance written notice by either party. The term of the Lease shall be as agreed by the Family and the Owner, subject to the limitations of the preceding sentence. The term of the Contract shall be for the term of the Lease; Provided, that if a Family continues in occupancy after the expiration of the term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the PHA and incorporated in the Contract where appropriate), the Contract shall continue in effect for the duration of such tenancy subject to the limitation in the next sentence. Any renewal of the Contract and Lease term, and any continuation of tenancy beyond the term, shall in no case extend beyond the term of the ACC pertaining to the Contract and the Lease.

§ 882.108 Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this section upon request to the PHA by the Owner, provided that the

unit is in Decent, Safe, and Sanitary condition and that the Owner is otherwise in compliance with the terms of the lease. Subject to the foregoing and the provisions of Section 882.106, including the Fair Market Rent and rent reasonableness limitations of that section, adjustments to Contract Rents shall be as follows:

(1) *Annual Adjustment.* For Contracts entered into after September, 1978, an adjustment as of any anniversary date of the lease not to exceed the applicable Section 8 Annual Adjustment Factor (24 CFR Part 888) most recently published by HUD in the FEDERAL REGISTER, provided that the Owner has the legal right to terminate the tenancy as of such anniversary date. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract. For Contracts entered into prior to September, 1978, annual adjustments may be based on the percentage of change in the applicable published Existing Housing Fair Market Rents (with an appropriate reduction in the adjustment where utilities are paid directly by the Family), provided that the Owner has the legal right to terminate tenancy as of such anniversary date.

(2) *Special Adjustments.* A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utiltiy rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph (a)(1) of this section. The Owner shall submit financial statements to the PHA which clearly support the increase. Such adjustment shall be effective as of the date when the Owner has the legal right to terminate the tenancy, which need not be the anniversary date of the Contract.

(b) *Overall Limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in Sec. 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2)).

§ 882.109 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities.*—(1) *Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal.*—(1) *Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability Criteria.* The unit shall contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and Security.*—(1) *Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment.*—(1) *Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity.*—(1) *Performance Requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials.*—(1) *Performance Requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability Criteria.* Ceilings, walls, and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. In the case of a mobile home, the home shall be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding.

(g) *Interior Air Quality.*—(1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water Supply.*—(1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint.*—(1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the Owner shall provide a certification that the dwelling is in accordance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access.*—(1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properites, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood.*—(1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition.*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The units and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing—Performance Requirement.* The foregoing standards shall apply except for paragraph (b) of this section and the requirement in paragraph (c)(2) of this section for a kitchen area. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The sanitary facilities described in § 882.109(a) shall be contained within the unit.

(3) The central dining facility and central kitchen shall be located within the building or housing complex and be accessible to the occupants of the congregate units, and shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner by a food service or persons other than the occupants and shall be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(n) *Independent Group Residence—Performance Requirement.* The foregoing standards shall apply except for paragraphs (a), (b), (c), (f), (k), and (m) of this section. In addition, the following standards shall apply: (1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers (police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(4) The unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment. Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment shall not contain architectural barriers which impede access or use, and handrails and ramps shall be provided as appropriate.

(5) The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibrations or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards. The unit shall be located in a residen-

tial setting and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public or available private transportation to medical and other appropriate commercial and community service facilities.

(6) *Supportive Services.* (i) A planned program of adequate supportive services appropriate to the needs of the occupants shall be provided on a continual basis by a qualified Resident Assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide such services on a continual, planned basis. Supportive services which are provided within the unit may include the following types of services: counseling; social services which promote physical activity, intellectual stimulation and/or social motivation; training or assistance with activities of daily living including housekeeping, dressing, personal hygiene and/or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit shall not include the provision of continual nursing, medical or psychiatric care.

(ii) The provision and quality of the planned program of supportive services, including the minimal qualifications, quantity and working hours of the Resident Assistant(s) living in the unit or other person(s) providing continual supportive services, shall be initially determined by the Service Agency in accordance with the standards established by the State. Compliance with these standards by the Service Agency shall be regularly monitored throughout the term of the Contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services, etc.), or a local authority (other than the Service Agency providing services) designated by the State to establish, maintain and enforce such standards.

(iii) A written Service Agreement(s), approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease Approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.210(f)(2).)

(7) *State Approval.* Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State.

To insure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement(s) (or Lease, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.210(f)(2).)

§ 882.110 Types of housing.

(a) Any type of Existing Housing meeting the housing quality standards may be utilized under this part, except nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services. Examples of Existing Housing which may be utilized include, but are not limited to, privately owned apartments, houses and congregate housing units; existing FHA insured. Section 202 direct loan. Farmers Home Administration (FmHA) insured or direct loan, or VA guaranteed properties; properties held by the Secretary, or properties sold by the Secretary on which the Secretary has taken back a purchase money mortgage. Eligible types of Independent Group Residences include, but are not limited to, self-contained apartments and houses: *Provided,* They meet the requirements of § 882.109(n).

(b) Congregate housing may be utilized for eligible elderly, handicapped, disabled or displaced families or individuals. Independent Group Residences shall be utilized for eligible elderly, handicapped or disabled Families or individuals which require a planned program of continual supportive services.

(c) In any section 221(d)(3) below market interest rate (BMIR) or market interest rate (MIR), section 202, section 236 (insured or non-insured), FmHA section 515 interest credit project:

(1) units receiving assistance under the section 23 or rent supplement programs may continue to receive such assistance or, upon conversion of the section 23 units to section 8, the occupants may receive assistance under section 8, and (2) the occupants of units not receiving such assistance may receive section 8 assistance, provided that the total number of units in the project covered by Housing Assistance Payments Contracts under section 8 or receiving section 23 rental assistance, rent supplement assistance, section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement) does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for the purpose of relieving hardship of a particular Family or Families only with the approval of the Regional Administrator. Prior to granting such an approval, the Regional Administrator will review the request to determine whether assistance under Part 886, Subpart A, "Additional Assistance Program for Projects with HUD-insured and HUD-held Mortgages" is more appropriate and whether such assistance can be scheduled.

(d) For any section 221(d)(3) BMIR, section 202, section 236 (insured or noninsured), or FmHA section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent payable by the Eligible Family under section 23 or section 8 is less than the subsidized rent (which subsidy shall not be reduced on account of any section 23 or section 8 assistance).

(e) In no event may any occupant receive the benefit of more than one of the following: rent supplement, section 23 housing assistance, section 8 housing assistance, or section 236 "deep subsidy" rental assistance payments.

§ 882.111 Equal opportunity requirements.

Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and all rules, regulations, and requirements issued pursuant thereto. The PHA shall comply with section 3 of the Housing and Urban Development Act of 1968 and all rules, regulations and requirements issued pursuant thereto.

§ 882.112 Security and utility deposits.

(a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or $50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits

from its resources and/or other public or private sources.

(b) If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from the PHA for an amount not to exceed the lesser of: (1) the amount owed the Owner, (2) one month's Contract Rent, minus the amount of the security deposit, or (3) one month's Contract Rent, minus the greater of one month's Gross Family Contribution at the time of Lease execution or $50 (or the maximum amount allowable under State or local law). Any reimbursement under this section shall be applied first toward any unpaid Family Contribution due under the Lease. No reimbursement shall be claimed for unpaid rent for the period after termination of the Lease.

§ 882.113 Establishment of income limit schedules; 30 percent occupancy by very low-income families.

(a) HUD will establish schedules of Income limits for determining whether families qualify as Lower-Income Families and Very Low-Income Families.

(b) Each PHA shall administer its Existing Housing program under this Part, including the issuance of a sufficient number of Certificates to Very Low-Income Families, so that at least 30 percent of the Families for whom Leases are approved by the PHA are Very Low-Income Families. However, in connection with periodic reexamination of Family Income, the PHA shall ascertain whether at least 30 percent of all the assisted Families are Very Low-Income Families, and where the percentage is lower than 30 percent, the PHA shall thereafter use its best efforts in connection with subsequent issuance of Certificates of Family Participation to achieve at least a 30 percent level.

§ 882.114 [Reserved].

§ 882.115 Rent reduction incentive.

(a) If a Family selects a unit for which the Owner's proposed Contract Rent plus any applicable Allowance is below the applicable Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3), the Family will be given credit by a reduction (Rent Credit) in its required monthly Gross Family Contribution. The applicable Fair Market Rent or such higher rent, as approved, is that in effect at the time of Lease approval for the Family size. Thereafter the applicable rent is the rent appropriate to the Family size at the time of reexamination of Family income and composition. The purpose of this provision is to provide an incentive to Families to find the most economical Decent, Safe, and Sanitary housing suitable to their needs and approvable under this Part.

(b) The amount of the monthly Rent Credit shall be the dollar amount equal to that percentage of the Gross Family Contribution which the Rent Savings is of the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The Rent Savings is the amount by which the Fair Market Rent or such higher rent, as approved, exceeds the sum of the approved Contract Rent and any applicable Allowance.

(c) The Rent Credit shall not be payable if the Family selects a unit receiving the benefit of Federal, State, or local subsidies. However, HUD may, on its own initiative or at the request of a PHA, authorize applicability of the Rent Credit to subsidized units if HUD determines that it is in the public interest to do so because the project in which the units are located is experiencing a large number of vacancies or high turnover. The PHA shall make known to Certificate holders the fact that the approved units are not subject to the prohibition otherwise applicable with respect to subsidized units.

§ 882.116 Responsibilities of the PHA.

In administering its ACC with HUD, the PHA (subject to review or audit by HUD) shall be responsible for the following:

(a) Publication and dissemination of information concerning the availability and nature of housing assistance for Lower-Income Families;

(b) Public invitation of Owners to make dwelling units available for leasing by Eligible Families and development of working relationships and contracts with landlords and appropriate associations and groups;

(c) Receipt and review of applications for Certificates of Family Participation, verification of family income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this Part;

(d) Issuance of Certificates of Family Participation to Eligible Families;

(e) Notification of families determined to be ineligible;

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, landlord and tenant responsibilities, and basic program rules including the operation of the Rent Credit;

(g) Determination of amounts of Gross Family Contributions and Rent Credits, if any;

(h) Determination of amounts of housing assistance payments;

(i) Explanation of program procedures to Owners including those who have been approached by Certificate holders;

(j) Review of and action on Requests for Lease Approval, including monitoring to assure that the limitations on use of Section 8 housing assistance in subsidized projects specified in § 882.110(c) are observed;

(k) Making of housing assistance payments;

(l) Provision of housing information to assisted Families and referral of such Families to appropriate social service agencies upon request;

(m) Reexaminations of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Gross Family Contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(n) Redeterminations of amount of rent payable by the Family and amount of housing assistance payment in accordance with HUD-established schedules and criteria as a result of an adjustment by the PHA of any applicable Allowance for Utilities and Other Services;

(o) Inspections prior to leasing and inspections at least annually to determine that the units are maintained in Decent, Safe, and Sanitary condition, and notifications to Owners and Families of PHA determinations;

(p) Authorization of evictions (see § 882.215);

(q) Administration and enforcement of Contracts with Owners and taking of appropriate actions in case of noncompliance or default: and

(r) Compliance by the PHA with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration.

§ 882.117 Responsibilities of the owner.

(a) The Owner shall be responsible (subject to review or audit by the PHA or HUD) for performing all of his obligations under the Contract and Lease. The Owner's responsibilities shall include but not be limited to:

(1) Performance of all management and renting functions;

(2) Payment for utilities and services (unless paid directly by the Family);

(3) Performance of all ordinary and extraordinary maintenance;

(4) Collection of Family rents;

(5) Preparation and furnishing of information required under the Contract; and

(6) Compliance by the Owner with equal opportunity requirements.

(b) Any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section, provided that such contract shall not shift any of the Owner's responsibilities or obligations, and provided further that no such contract may be entered into with an entity which is responsible for administration of the Housing Assistance Payments Contract. If the Owner and a PHA wish to enter into a management contract, they may do so provided that the Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA or by HUD or an entity acting on behalf of HUD. If no other PHA is able and willing to administer the Contract, HUD will do so or will designate an entity to do so on its behalf, pursuant to § 882.121(b).

§ 882.118 Responsibility of the family.

A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under the Certificate of Family Participation issued to it by the PHA and under the Lease with the Owner.

§ 882.119 Single ACC.

(a) All of the Existing Housing units administered by a PHA under the Housing Assistance Payments Program (except where the PHA's area of operation is within the jurisdiction of more than one field office) shall be covered by and administered under a single ACC Part I.

(b) In the event that a PHA applies for additional Existing Housing units, the units, if approved, shall be incorporated into a revised Part I of the ACC which shall cover the PHA's entire Housing Assistance Payments Program for Existing Housing. The revised Part I shall be for a new term for the aggregate number of units starting with the date of execution of the revised ACC Part I. When the PHA applies for additional units, it shall specify the number of years for which the aggregate number of units is needed and shall demonstrate such need. On the basis of such showing, HUD shall determine whether the new term for the aggregate number of units shall be five years or such lesser number of years as HUD may find to be justified. The maximum annual contribution of the revised program shall be the sum of (1) an appropriate amount of annual contribution for the number of units prior to the revision, taking into account the existing ACC Reserve Account, plus (2) the amount approved for the additional units which shall be computed pursuant to § 882.104(a).

§ 882.120 Recently completed housing.

(a) HUD may invite and approve applications by PHA's for use of Existing Housing units at the higher Fair Market Rents authorized by paragraph (b) of this section, where construction or substantial rehabilitation of such units was completed (legally available for occupancy) no more than six years prior to the date of the leasing of the unit ("Recently Completed Housing") in areas which meet the following characteristics:

(1) The housing needs of Lower-Income Families in the area cannot be addressed by use of Existing Housing within the rent limitations authorized under Section 882.106 because:

(i) The rental vacancy rate for the municipality, county, or similar locality is inadequate. (A vacancy rate of six percent will be considered adequate except in localities experiencing very little growth, in which a vacancy rate lower than six percent may be deemed adequate); or

(ii) The housing needs of one or more particular household types (e.g., elderly/handicapped family, large family) cannot be addressed utilizing the supply of Existing Housing at or below the rents authorized under § 882.106 because of lack of availability of appropriate units. In such case, the Recently Completed Housing to be authorized will be limited to the needs of the specialized household types.

(2) The housing needs of Lower-Income Families can be addressed by use of Recently Completed Housing because:

(i) The rental vacancy rate for the municipality, county, or similar locality among Recently Completed Housing units is adequate as defined in paragraph (a)(1)(i) of this section; or

(ii) Units of Recently Completed Housing are available which will meet the housing needs of one or more household types which cannot be met utilizing the supply of housing within the rent limitations of the program.

(b) Rents no more than 10 percent above the Fair Market Rents for Recently Completed Housing (75 percent of the Section 8 New Construction Fair Market Rents) may be approved by the PHA pursuant to § 882.106(a)(2) or by HUD pursuant to § 882.106(a)(3) or (4). However, rents more than 10 percent above the applicable Fair Market Rent shall not be approved for Recently Completed Housing.

(c) Applications shall be submitted by the appropriate PHA or PHA's for an Existing Housing program utilizing Recently Completed Housing which may but need not be included as a part of an application for other housing assistance under this Part.

(d) The approval of such an application shall authorize the PHA to (1) publicize the availability of such Fair Market Rents for the specified number of units of Recently Completed Housing, (2) invite Owners of such housing to submit evidence that their units qualify as Recently Completed Housing, and (3) inform holders of Certificates of Family Participation of the locations of such Housing and of the applicable Fair Market Rents. Annual and special adjustments in Contract Rents for Recently Completed Housing shall be made in accordance with Section 882.108 and are also subject to the Fair Market Rent and rent reasonableness limitations.

(e) All provisions of this Part, not specifically modified by this section, shall be applicable to housing under this section.

§ 882.121 HUD administration of programs under this part.

(a) If, after sending the invitations required by Sec. 882.203, no application is received by HUD by the deadline date for operation of an Existing Housing program in the area, or if the only applications received are not approvable, the HUD field office shall make such further inquiry, including advice and offer of assistance, as in its judgment may result in the submission of an approvable application by a PHA.

(b) If, on the basis of such further inquiry and all other pertinent information available to the HUD field office, HUD determines that there is no PHA organized or that there is no PHA able and willing to implement the provisions of this Part for an area, HUD (or an entity acting on behalf of HUD) may, pursuant to section 8(b)(1) of the Act, enter into Contracts with Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such area.

(c)(1) If one or more Owners wish to contract for the management of their housing by the PHA which is administering the ACC for that area under this Part, and the PHA is willing to do this, or if the PHA owns housing which is suitable for utilization under this Part, HUD shall ascertain whether there is another PHA able and willing to enter into an ACC and adminis-

ter the program under this Part with respect to housing which is managed or owned by the first PHA. If so, such an ACC may be entered into, and the housing covered thereby shall be excluded from the ACC with the first PHA.

(2) If on the basis of inquiry and all other pertinent information available to the HUD field office, HUD determines there is no PHA able and willing to administer an ACC with respect to housing managed or owned by the first PHA, HUD (or another entity acting on behalf of HUD), may, pursuant to section 8(b)(1) of the Act, enter into Contracts with the Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such housing.

§ 882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on September , 1978.

The Regulations shall be applicable to Certificates outstanding on September , 1978, and Requests for Lease Approval pending on September , 1978, to the maximum extent and in the manner that the PHA deems feasible.

Subpart B—Program Development and Operation

§ 882.201 Allocations of contract authority to field offices.

HUD field offices will be allocated contract authority for the Section 8 Housing Assistance Payments Program for metropolitan areas and for non-metropolitan areas in conformance with section 213(d) of the HCD Act and regulations pursuant thereto (24 CFR 891).

§ 882.202 Determination of number and types of units to be assisted.

Each field office shall, after considering the contents of any Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, including any applicable State or areawide housing allocation plan, determine the number and types of units to be made available for new construction, substantial rehabilitation and existing housing in the geographic areas established for the purpose of allocating funds (herein called "allocation areas").

§ 882.203 Invitations for existing housing program applications.

(a) *Sending of Invitation.* The HUD field office shall initiate implementation of its program with respect to Existing Housing by sending invitations for Existing Housing Program applications, for the area(s) for which applications are desired in accordance with a schedule established by the field office. The schedule may be modified at such time as circumstances require. The invitation shall be sent on the same day to appropriate PHAs, to the the Governor, and to the chief executive officers of the appropriate counties, municipalities, or other governmental entities or public bodies which are authorized to engage in or assist in the development or operation of low-income housing. In addition, HUD shall send promptly information concerning its issuance of invitations to trade journals, news media (including minority media), minority organizations involved in housing and community development, and fair housing groups. Additional copies of the invitation shall be available in the HUD field office.

(b) *Contents of Invitation.* The invitation shall indicate: (1) that applications may be submitted by public housing agencies (i.e., any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing), (2) the maximum number of units, (3) the geographic area, (4) the deadline for submission of applications (which shall be at least 30 but not more than 60 calendar days after the date invitations are sent as provided in the third sentence of paragraph (a) of this section), (5) the fact that application and other forms and copies of Program regulations may be obtained from the field office, (6) the fact that if no application is received by the deadline date, HUD may determine to carry out the Existing Housing program directly, pursuant to section 8(b)(1) of the Act, and (7) such other basic information as the field office may specify.

§ 882.204 Submission of Application.

The application for an Existing Housing Project shall be submitted by a PHA to the HUD field office. Advice and assistance in the preparation of the application are available from the HUD field office.

(a) The application shall be in the form and in accordance with the instructions prescribed by HUD and shall:

(1) Indicate the types of Existing Housing (e.g., elevator, non-elevator) likely to be utilized in the proposed project and whether authorization for the use of Recently Completed Housing is desired (see Sec. 882.120).

(2) Indicate the total number of units expected to be utilized by unit size (i.e., one bedroom units, two bedroom units, etc.) and the approximate number of units for occupancy by elderly, handicapped, or disabled.

(3) Demonstrate that the project requested in paragraph (a)(2) of this section is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of Lower-Income Families, or in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped, disabled, large Families and those displaced) residing in or expected to reside in the community.

(4) Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to participate in the section 8 Existing Housing program for the area in which the Existing Housing program is to be carried out and include in such demonstration (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel.

(5) Include a statement that the housing quality standards to be used in the operation of the program will be as set forth in § 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

(6) Include a proposed schedule specifying the number of units to be leased.

(b) For each application, or in a combined submission covering several applications, the PHA shall submit the following items with the application(s) or after application approval but no later than with the PHA-executed ACC.

(1) An equal opportunity housing plan.

(i) The plan shall describe the PHA's policies and procedures for:

(A) Fulfilling the requirements of § 882.207(a) and § 882.208.

(B) Achieving the participation of owners of units of suitable price and quality in areas outside low income and minority concentrations and outside the local jurisdiction where possible.

(C) Selecting among eligible applicants those to receive Certificates of Family Participation, including any provisions establishing local requirements for eligibility or preferences for selection in accordance with § 882.209(a)(3).

(D) Providing assistance in finding a unit to Certificate holders who allege that illegal discrimination is preventing them from finding a suitable unit.

(ii) Relative to accomplishing the task set forth in paragraphs (b)(1)(i) (B) and (D) of this section, the PHA should consider the possibility of sub-

contracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in the process of finding housing in the locality.

(iii) The plan shall also include signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of Civil Rights Act of 1968; Executive Order 11063; and if the housing assistance may be used within an area of a Housing Assistance Plan, a certification that the applicant will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the Housing Assistance Plan.

(2) Estimates of financial requirements for preliminary costs, administrative costs and housing assistance payments on the prescribed forms.

(3) An administrative plan. (i) The plan shall include: a statement of the PHA's overall approach and objectives in administering the Existing Housing program; a description of the procedures to be used in carrying out each function; and a statement of the number of employees proposed for the program, by position and functions to be performed.

(ii) The following functions should be addressed: outreach to eligible families; contact with Owners; completion of applications and determinations of family eligibility; selection of families; computation of Gross Family Contributions; briefing of Families and issuance of Certificates; use of housing quality standards and inspections; lease approval and Contract execution; payments to Owners; recertification of Incomes; provision of housing information and services to recipient Families; review and adjustment, as necessary, of Allowances for Utilities and Other Services; reinspection of units under Contracts; processing requests for rent adjustments by Owners; terminations; establishment of complaint and appeal procedures; monitoring program performance.

(4) A proposed schedule of Allowances for Utilities and Other Services with a justification of the amounts proposed.

§ 882.205 Processing of applications.

(a) *Initial Screening of Applications.* Promptly after receipt of an application, the HUD field office will check whether or not the application is complete. If an application is incomplete, the PHA will be so notified and will be given until the deadline date or, if necessary, a reasonable time thereafter within which to complete the application.

(b) Pursuant to section 213 of the HCD Act and regulations issued pursuant thereto, no later than 10 working days after receipt of an application, the field office shall send a notification to the chief executive officers of units of general local government of those localities which are identified in the Application for Existing Housing as primary areas from which families to be assisted will be drawn. This notification shall:

(1) In all cases, advise that the field office has received and is considering an application for housing assistance to be provided to families from that jurisdiction, identify the housing program (existing housing), state the number of units by bedroom size and the number of units by household type (elderly and/or handicapped, family, large family), and identify the areas from which families to be assisted will be drawn.

(2) For applications for areas with Housing Assistance Plans;

(i) Advise the local government that it may submit, no later than 30 days after the date of the notification letter, objections to the approval of the application on the ground that the application is inconsistent with the applicable Housing Assistance Plan.

(ii) Invite submission of any other comments on behalf of the local government which are relevant to a determination by the field office director concerning approval of the application for housing assistance.

(3) For applications for areas without Housing Assistance Plans, invite the local government to submit, no later than 30 days after the date of the notification letter, comments which are relevant to a determination by the field office concerning the application for housing assistance.

(c) *Evaluation of Applications.* HUD may begin its evaluation immediately upon receipt of the application, but no final decision of approval or disapproval of the application may be made until after the deadline for receipt of applications or the end of the opportunity for response referred to in paragraph (b) of this section, whichever is later. Each application will be evaluated by HUD on the basis of all pertinent factors under this Part, including comments, if any, received during the comment period from the unit of general local government. In selecting among approvable applications, HUD will give preference as provided in the last sentence of § 882.103(c).

(d) *Disapproval Conditional Approval, or Approval of Applications.* If an application is disapproved, HUD shall notify the applicant by letter indicating in detail the reasons for disapproval. If an application can be approved only if certain changes are made, HUD shall notify the applicant by letter stating that the application can be approved if the PHA adopts, within a reasonable time as determined by HUD, the changes required by HUD. If an application is approved, the applicant shall be sent a notification of application approval.

§ 882.206 Annual contributions contract; schedule of leasing.

(a) *Transmittal of ACC.* After the HUD field office has prepared the ACC, the ACC shall be transmitted to the PHA for execution by the PHA. The ACC shall be returned to HUD together with the PHA's equal opportunity housing plan, estimates of its financial requirements on the prescribed forms, administrative plan and proposed schedule of Allowances for Utilities and Other Services, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, financial estimates, the administrative plan and the schedule of Allowances for Utilities and Other Services, HUD shall execute the ACC. HUD then shall transmit a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

(c) *Schedule of Leasing.* The ACC shall include a provision relating to expeditious leasing of units under the program. HUD will review the PHA-proposed schedule specifying the number of units that are expected to be leased by the end of each three-month period, and will make such changes as it may deem appropriate. In its transmittal of the ACC to the PHA, HUD will include the HUD-approved schedule. This schedule will be established so as to implement HUD policy that all units in a section 8 Existing Housing program of 100 units or more must be leased by Eligible Families within 12 months. In the case of smaller programs, a shorter time period may be established by HUD. HUD may reduce the number of units and/or the amount of the annual contributions commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or fails to adhere to the schedule for other reasons which justify a reduction in the number of units or changes in unit size.

§ 882.207 Public notice to lower-income families; waiting list.

(a) *Public Notice to Lower-Income Families.* Promptly after receiving the executed ACC, and thereafter as may be necessary, the PHA shall make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the avail-

ability and nature of housing assistance for lower-income families (including assistance with respect to units already occupied by the families) and the notice shall inform such families where they may apply for Certificates of Family Participation. The PHA shall take affirmative action to provide opportunities to participate in the program to persons who, because of such factors as race, ethnicity, sex of household head, age, or source of income, are less likely to apply for Certificates of Family Participation; and, if there is a Local Housing Assistance Plan pursuant to Title I of the HCD Act, to persons expected to reside in the community because of present or planned employment, as indicated in the plan.

(1) The notice shall also state that occupants of housing assisted under the Act (including leased housing and housing occupied with assistance under the Section 23 Housing Assistance Payments Program), applicants on a waiting list for any such housing, and holders of Certificates of Family Participation for such housing must apply specifically if they wish to be considered for a Certificate of Family Participation under this Part. In addition, the notice shall state that such applicants for Certificates will not lose their place on the public housing waiting list.

(2) Such notice shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(b) *Waiting List.* The PHA shall establish and maintain a waiting list for applicants for Certificates of Family Participation under this Part. If an applicant is determined by the PHA to be eligible but the PHA has determined pursuant to Sec. 882.209(a)(5) that it cannot issue any more Certificates, the PHA shall place such Family on this waiting list and notify the Family of this fact and of the approximate date that a Certificate may be issued, insofar as such date can reasonably be determined.

(c) *Suspension of Taking of Applications.* If the number of Families on the PHA's waiting list for Certificates of Family Participation is such that there is no reasonable prospect that additional applicants could be issued Certificates within the next year, the PHA may determine to suspend the taking of further applications, and in such case the PHA shall not be required to take the actions specified in paragraph (a) of this section. Any such determination by the PHA shall be publicly announced in the same manner as provided in paragraph (a) of this section and shall be effective as of the date stated in such announcement.

§ 882.208 Activities to encourage participation by owners and others.

(a) The PHA shall invite Owners, through publication in a newspaper of general circulation as well as through minority media and other suitable means, to make dwelling units available for leasing by Eligible Families, and in doing so, the PHA shall encourage the participation of Owners of units in areas other than low-income or minority concentrated areas. Such invitation shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan, and with the HUD advertising guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan. The PHA shall publicize the needs of the program in such ways as to reach a maximum number of Owners and real estate brokers.

(b) The PHA shall also (1) request the field office to furnish it with a list of Secretary-held properties available for rent, to be included in the Certificate Holder's Packet, (2) develop working relationships with local Owners and real estate broker associations, (3) establish contact with civic, charitable, or neighborhood organizations which have an interest in housing for low-income families, and public agencies concerned with obtaining housing for displacees, and (4) explain the provisions of the program, including equal opportunity requirements, to real estate, landlord, and other groups the members of which have dealings with low-income families or are interested in housing such families.

§ 882.209 Certificates of family participation.

(a) *Initial Determination of Family Eligibility.* (1) The PHA shall be responsible for determining eligibility for a Certificate of Family Participation, in accordance with schedules and criteria established by HUD. The PHA shall be responsible for verifying the sources of the family's income and other information necessary for determining eligibility and the amount of the assistance payment. If an Owner is the initial point of contact by an applicant who does not have a Certificate, he shall refer such applicant to the PHA.

(2) In issuing the Certificate of Family Participation, the PHA shall enter on the Certificate the smallest unit size consistent with the following criteria:

(i) The bedroom size assigned shall not require more than two persons to occupy the same bedroom.

(ii) The bedroom size assigned shall not require persons of the opposite sex, other than husband and wife or very young children, to occupy the same bedroom.

(iii) All single person households shall be assigned a 0-bedroom unit if 0-bedroom units are included in the Program as set forth in the ACC or if the individual will reside in an Independent Group Residence. (See § 882.106 (c)(2)(ii).) Where there are no 0-bedroom units in the program or the applicant will not select an Independent Group Residence, single person households shall be assigned a 1-bedroom unit. An elderly, handicapped or disabled single person household planning to live with an unrelated person essential to his or her care may be assigned a 2-bedroom unit.

(iv) The PHA may request variations of these criteria as a part of its administrative plan on the basis of local codes or market conditions which require the adoption of alternative standards. Variations of these criteria must be specifically approved by the HUD Field Office.

(3) The PHA shall select Families for Certificates in accordance with the provisions of this Part and in accordance with the PHA's application, including any PHA rules for preferences as approved by HUD (see § 882.204 (b)(1)(i)(C)). If the PHA has issued a Certificate to an eligible individual residing in an Independent Group Residence, the PHA shall establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a Section 8 recipient in an Independent Group Residence moves. Use of this preference is subject to the availability of funds for appropriately sized units. The Certificate holder given this preference shall select the unit of his or her choice and does not have to reside in the Independent Group Residence in which a vacancy has occurred. Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant for a Certificate of Family Participation, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. (See also § 882.209(e)(2).)

(4) Every applicant for a Certificate shall complete and sign the form of application prescribed by HUD.

(5) The PHA shall maintain a system to assure that it will be able to honor all outstanding Certificates of Family Participation within its ACC

authorization and that it will comply, to the maximum extent feasible, with the unit distribution in the ACC.

(6) PHA records on applicant and certified Families shall be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Issuance of Certificate of Family Participation, and Certificate Holder's Packet.* If an applicant is determined by the PHA to be eligible and is selected for participation, he shall be given a Certificate of Family Participation signed by the PHA. At the same time, the Family shall be given one Certificate Holder's Packet, which shall include:

(1) Request for Lease Approval;

(2) Required Lease Provisions and Prohibited Lease Provisions (see Appendices I and II);

(3) Information regarding lead based paint poisoning hazards, symptoms and precautions;

(4) The PHA's forms for inspection of housing units.

(5) Fair Housing U.S.A. (HUD-63-EO-(6)), or the Spanish translation thereof (HUD-169-EO-(2)), as appropriate, both issued by the U.S. Department of Housing and Urban Development and the housing discrimination complaint form (HUD-903) or the Spanish translation thereof (HUD-903a);

(6) A list of Secretary-held properties available for rent;

(7) Information concerning Recently Completed Housing, if any, including the locations of such housing and the applicable Fair Market Rents;

(8) Information as to the Gross Family Contribution, the Fair Market Rent appropriate for the Family size and composition, and the benefit of the Rent Credit for rents below the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3);

(9) The PHA's schedule of Allowances for Utilities and Other Services; and

(10) Such other items as the PHA may determine should be included.

(c) *Briefing of Certificate Holders.* When a Family initially receives its Certificate of Family Participation, a full explanation of the following shall be provided to assist the Family in finding a suitable unit and to apprise the Family of its responsibilities and the responsibilities of the Owner (this may be done either in group or individual sessions; adequate opportunity shall be provided for Families to raise questions and to discuss the information provided):

(1) Family and Owner responsibilities under the Lease and Contract;

(2) How to find a suitable unit;

(3) The general locations and characteristics of the full range of neighborhoods in which the PHA is able to execute Contracts and in which units of suitable price and quality may be found.

(4) Applicable housing quality standards;

(5) Significant aspects of the applicable State and local laws;

(6) Significant aspects of Federal, State and local fair housing laws;

(7) Applicable Fair Market Rent, determination of Gross Family Contribution, establishment of housing assistance payments and operation of the Rent Credit; and

(8) That the family may obtain copies of the Housing Quality Standards, the Contract and other pertinent forms or documents, on request.

(d) *Expiration and Extension of Certificate.* (1) The Certificate of Family Participation shall expire at the end of 60 days unless within that time the Family submits a Request for Lease Approval.

(2) If a Certificate expires or is about to expire, a Family may submit the Certificate to the PHA with a request for an extension. The PHA shall review with the Family the efforts it has made to find a suitable dwelling unit and the problems it has encountered and shall determine what advice or assistance might be helpful. If the PHA believes that there is a reasonable possibility that the Family may, with the additional advice or assistance, if any, find a suitable unit, the PHA may grant one or more extensions not to exceed a total of 60 days. Expiration of a Certificate shall not preclude the Family from filing a new application for another certificate.

(e) *Continued Participation When Assisted Family Moves.* (1) If an assisted Family notifies the PHA that it wishes to obtain another Certificate of Family Participation for the purpose of finding another dwelling unit within the area in which the PHA has determined that it is able to enter into Contracts or that it has found another such unit to which it wishes to move, the PHA shall (unless it does not have sufficient ACC authority for continued assistance to the Family) issue another Certificate or process a Request for Lease Approval, as the case may be, unless the PHA determines that the Owner is entitled to payment pursuant to § 882.112 on account of nonpayment of rent or other amount owed under the Lease and that the Family has failed to satisfy any such liability.

(2) If an assisted Family wishes to move out of the area in which the PHA has determined that it is able to enter into Contracts and the Family qualifies under paragraph (e)(1) of this section, the Family may obtain housing assistance in the jurisdiction to which it is moving, provided that the Family obtains a Certificate of Family Participation from the appropriate PHA. The appropriate PHA shall treat the Family either as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance. In either case the PHA shall not deny the Family a Certificate on the ground that its Income is above limits for admission in that jurisdiction, and any requirements and preferences of the PHA as to admission are subject to the requirements of § 882.209(a)(3).

(f) *Families Determined by the PHA to be Ineligible.* If an applicant is determined by the PHA to be ineligible on the basis of Income or family composition, or for any other reason, the PHA shall promptly notify the applicant by letter of the determination and the reasons therefor, and the letter shall state that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant is ineligible, it shall so notify the applicant in writing. The procedures of this paragraph do not preclude the applicant from exercising its other rights if it believes it is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the notification letters, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

§ 882.210 Request for lease approval.

(a) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including lease provisions, lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed lease, which shall contain all required provisions shown in Appendix I and shall be complete except for execution and entry of the portion of monthly rental which the Family shall be obligated to pay to the Owner.

(b) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay di-

rectly for any of the utilities or services, the PHA shall determine the amount of the Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(c) *Amount of Rent Payable by Family to Owner.* The amount of rent payable by the Family to the Owner shall be the amount of the Gross Family Contribution, or the amount of such Contribution less the amount of any Allowance for utilities and other services not to be provided by the Owner. If the Family is entitled to a Rent Credit pursuant to § 882.115, the amount of the rent otherwise payable by the Family to the Owner shall be reduced by the amount of the Credit. If the Gross Family Contribution minus the Rent Credit is less than the Allowance for Utilities and Other Services, the PHA shall pay the difference directly to the Family.

(d) *Decent, Safe, and Sanitary Condition of Unit.*

(1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with Sec. 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary.

(3) A report for every inspection and reinspection under this paragraph (d) shall be prepared and maintained in the files of the PHA. Each such report shall specify (i) any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the Owner that they were caused during the period of occupancy by the Family.

(e) *Oversized Units.* Regardless of the unit size stated on the Certificate, no otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, provided that the rent to Owner plus any Allowance applicable to the actual larger size unit does not exceed the Fair Market Rent, or such higher rent as may previously have been approved by HUD pursuant to § 882.106(a) (3) or (4), for the smaller size unit initially determined appropriate for the Family. Similarly, a unit with fewer bedrooms than the number stated on the Certificate may be approved: *Provided*, That the unit meets the space requirement of § 882.109(c), or such variation as may have been approved by HUD, and the rent to Owner plus any Allowance applicable to the actual smaller size unit does not exceed the Fair Market Rent, or such higher rent as approved by HUD pursuant to § 882.106(a) (3) or (4), for the actual smaller size unit.

(f) *Lease Requirements.* (1) *Term of Lease.* The PHA shall determine that the term of Lease is consistent with Sec. 882.107(b).

(2) *Required Provisions.* The Lease shall contain the required provisions specified in Appendix I. Leases for Independent Group Residences shall also incorporate by reference the supportive services to be provided in accordance with the written Service Agreement between the Owner and the Service Agency and/or other entities providing the necessary supportive services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease. This Service Agreement or pertinent Lease provisions shall be approved in writing by the State prior to PHA execution of the Contract. (See §§ 882.102 and 882.109(n)(6).)

(3) *Prohibited Provisions.* The Lease shall not contain any clause which falls within the classifications listed in Appendix II.

(g) *Approval of Lease and Execution of Related Documents.* (1) If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed lease complies with the requirements of this part, the PHA shall notify the Owner and the Family of its determination of Lease approval, prepare the Contract, enclose a copy of the lease to be executed and furnish two copies of the Contract to the Owner.

(2) After notification: (i) The Family and the Owner shall execute the Lease and return a copy to the PHA; (ii) The Owner shall sign and return both copies of the Contract to the PHA; (iii) The PHA shall execute the Contract and return an executed copy to the Owner.

(3) The PHA shall retain in its files the following: The Request for the Lease Approval, the approved Lease, the inspection report(s), the certification pursuant to § 882.106(b) that the rent is reasonable and not in excess of rents currently being charged by the Owner for comparable unassisted units, and the executed Contract.

(h) *Disapproval of lease.* (1) If the PHA determines that the lease cannot be approved for any reason, including the condition of the unit, the PHA shall so notify the Owner and the Family that:

(i) The proposed lease and/or the proposed dwelling unit are/is disapproved, for specified reasons; and that,

(ii) If the conditions requiring disapproval are remedied, and a Request for Lease Approval is resubmitted on or before a specified date, the Lease will be approved if the PHA determines that the conditions have been remedied to its satisfaction;

(2) The Certificate of Family Participation shall not expire before the date specified pursuant to paragraph (h)(1)(ii) of this section.

(3) The PHA shall retain in its files the following: the Request for Lease Approval, the inspection report(s), if any, and the notification of disapproval of the lease.

§ 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.210(d)(1), the PHA will inspect or cause to be inspected each dwelling unit leased to an Eligible Family at least annually and at such other times as may be necessary to assure that the Owner is meeting his obligations to maintain the unit in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the PHA's housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has failed to maintain a dwell-

ing unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA determines to terminate the Housing Assistance Payments Contract, the PHA shall issue to the Family another Certificate of Family Participation.

§ 882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the PHA at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly families), and appropriate redeterminations shall be made by the PHA of the amount of Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD. A Family's eligibility for housing assistance payments shall continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rents or other relevant circumstances during the term of the Contract. If the Contract terminates at a time when the Family is ineligible for payments the Contract shall not be renewed. In addition, if one year has elapsed since the date of the last housing assistance payment, the Contract shall be terminated (with the consent of the Owner if the Contract does not provide for termination under such circumstances) even if the termination date has not yet been reached. A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

§ 882.213 Overcrowded or under occupied units.

If the PHA determines that a dwelling unit is not Decent, Safe, and Sanitary by reason of increase in Family size, or the Family is residing in a unit larger than appropriate because of a reduction in Family size and the Gross Rent exceeds the Fair Market Rent for the unit size appropriate for the Family size, the PHA shall issue the Family a new Certificate and the Family and PHA shall try to find an acceptable unit as soon as possible. If an acceptable unit is found that is available for occupany by the Family, and the Lease with the first Owner can be terminated in accordance with its terms, the Contract with the first Owner shall be terminated and housing assistance payments shall be made available to the Family for occupany in the acceptable unit. Housing assistance payments will not be terminated unless the Family's Certificate has expired and the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

§ 882.214 Adjustment of allowance for utilities and other services.

(a) *Annual Review.* At least annually, the PHA shall determine whether there has been a substantial change in utility rates or other charge of general applicability, and whether an adjustment is required in the Allowance of Utilities and Other Services by reason of such changes or because of errors in the original determination. If the PHA determines that an adjustment should be made, the PHA shall establish a schedule of adjustments taking into account size and type of dwelling units and other pertinent factors and shall furnish HUD with a copy of the adjusted schedule.

(b) *Adjustments in Payments Under Contracts in Effect.* The PHA shall the determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and shall notify the Owners and Families accordingly.

(c) *Effect on Fair Market Rents.* If the PHA finds that utility cost changes are causing substantial difficulties in leasing Decent, Safe and Sanitary housing within the existing Fair Market Rent limitations, the PHA shall furnish appropriate documentation to HUD with a request for consideration of the need for a change in the Fair Market Rents.

§ 882.215 Eviction.

The Owner shall not evict any Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner. The Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Family may, within the same period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of the notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

§ 882.216 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are not applicable to the Section 8 Housing Assistance Payments Program under this Part.

§ 882.217 HUD review of contract compliance.

HUD will review program operations at such intervals as it deems necessary to ensure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 882.218 PHA reporting requirements. [Reserved]

APPENDIX I

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING

Required lease provisions

The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between ——— (Lessor) and ——— (Lessee) for the following dwelling unit: ———. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be $—— per month.

b. Of the total rent, $—— shall be payable by the Public Housing Agency (PHA) as housing assistance payments on behalf of the Lessee and $—— shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-es-

tablished schedules and criteria; or by reason of adjustement by the PHA of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. the Lessor shall provide the following utilities: [Specify].

d. The Lessor shall provide maintenance and services as follows:

(1) The Lessor shall maintain the dwelling unit and all equipment provided therewith, as well as common areas, facilities and equipment provided for the use and benefit of the Lessee, in compliance with the Housing Quality Standards on the basis of which this Lease was approved by the Public Housing Agency, and the Lessor shall respond in a reasonable time to calls by the Lessee for services consistent with said obligation. Where applicable (as in case of multi-unit buildings), such maintenance with respect to common areas, facilities and equipment shall include cleaning; maintenance of lighting and equipment; maintenance of grounds, lawns and shrubs; and removal of snow and ice. Where security equipment and services are to be provided by Lessor they are as follows: [Specify, or state "None"].

(2) Extermination services shall be provided by Lessor as conditions may require. If such service it to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

(3) Repainting shall be provided by Lessor as conditions may require. If such service is to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

e. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor. Because the Lessor must obtain the PHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the lease. The PHA shall notify the Lessor and the Lessee of its determination within 20 days of the date of the notice to the Lessee, whether or not the Lessee has presented objections to the PHA. If the Lessor has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Lessor that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

f. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

(g)(1) This Lease shall not become effective unless the PHA has executed a Housing Assistance Payments Contract with the Lessor by the first day of occupancy specified in the Lease.

(2) This Lease shall terminate upon the date of any termination of the Housing Assistance Payments Contract, including any termination due to termination of eligibility of the Lessee. In the event that the PHA determines, after having given the Lessee reasonable notice (with a copy to the Lessor) and opportunity to respond, that the Lessee is ineligible for further housing assistance payments because of failure to comply with the Lessee's obligations under the Certificate of Family Participation, the PHA shall notify the Lessor and the Lessee of such determination. Such determination shall be grounds for termination of this Lease by the Lessor.

Lessor _____
By _____
Date _____
Lessee _____
Date _____

APPENDIX II

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING

Prohibited lease provisions

Lease clauses which fall within the classifications listed below shall not be included in any Lease in this program.

1. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

2. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional of negligent on the part of the landlord or the landlord's authorized representative or agents.

4. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

6. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal cost whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of this clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

(Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued at Washington, D.C., October 25, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 78-36285 Filed 12-28-78; 8:45 am]

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