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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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

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

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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rules and regulations

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

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

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary

Correction

In FR Doc. 77-184, appearing at page 743, in the issue for Tuesday, January 4, 1977, the second sentence of the effective date paragraph in the second column on page 743 should read as follows:

Proceedings instituted prior to said date shall continue under the applicable rules of practice in effect when the proceedings were instituted, unless the parties to a proceeding agree that the proceeding shall be governed on and after February 1, 1977, by the new uniform rules set forth in the new Subpart H.

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

[Lemon Reg. 77]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period Jan. 30–Feb. 5, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.377 Lemon Regulation 77.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is showing some improvement early this week. Average f.o.b. price was $4.97 per carton the week ended January 22, 1977 compared to $5.13 per carton the previous week. Track and rolling supplies at 120 cars were up 20 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 25, 1977.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 30, 1977, through February 5, 1977, is hereby fixed at 200,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: January 27, 1977.

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

[FR Doc.77-3066 Filed 1-27-77;11:46 am]

PART 981—ALMONDS GROWN IN CALIFORNIA

Revision of Crediting for Paid Advertising

Notice of a proposal to amend Subpart-Administrative Rules and Regulations (7 CFR 981.441—981.481; 42 FR 3159) by revising § 981.441 which pertains to crediting for paid advertising was published in the November 16, 1976, issue of the FEDERAL REGISTER (41 FR 50452). The subpart is operative pursuant to the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 41 FR 26852; 27827, 53650), hereinafter collectively referred to as the "order", regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was based on a unanimous recommendation of the Almond Board of California.

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal; none were received.

The proposal was to revise § 981.441 to clarify and update the current provisions and to delete references to the Board's former name, the Almond Control Board. Section 981.441 pertains to crediting for paid advertising which is authorized pursuant to § 981.41 in the order.

As provided in § 981.441(b), in order for a handler to receive credit for his paid advertising each of his advertisements must be published, broadcast, or

displayed during the crop year for which credit is requested. In the case of outdoor advertising, paragraph (b) provides that the credit granted by the Board shall be that which is appropriate when compared with the applicable rate published in the "Buyers Guide to Outdoor Advertising". Since the Buyers Guide, however, no longer gives rate data on outdoor advertising, outdoor rate cards should be used by the Board as provided in the notice.

Also, a handler may not know the exact amount of his assessment obligation until after June 30, the end of the crop year. In this situation, a handler's expenditures for creditable advertising may be less than the amount he could have credited against his assessment obligation, and he may need an additional period to place more advertising. Thus, § 981.441(b) would also be revised so that no later than September 1 of the subsequent crop year a handler may expend a maximum of five percent of his total creditable advertising obligation as of the June 30 redetermination report. The accompanying documentation must be filed with the Board no later than September 30. Also, a handler utilizing this extension of time, would have to certify to the Board, at time of redetermination, his planned expenditures during the extension period.

Finally § 981.441(b) would also be revised to provide that for advertisements in countries other than the U.S. and Canada, § 981.441(e) would apply. Currently, § 981.441(e)(1) provides that advertising in Canada may be credited, but as proposed, § 981.441(b) would provide such authority.

Section 981.441(d) outlines what portion of a handler's media expenditures may be credited against his assessment obligation in various advertising situations. In the case when the advertisement is a result of a joint effort on the part of a handler or seller of a complementary commodity or product which includes the brand of both, the allowance shall be 50 percent of the total allowable payment to the advertising medium, or the handler's allowable payment thereof, whichever is less. In the case of two complementary commodities or products, the allowance is one-third. Section 981.441(d) would be revised so that a portion of the allowable media expenditures for which a handler would be granted credit, would be determined by the number of manufacturers or sellers of complementary commodities or products, not the number of complementary commodities or products themselves. For an advertisement resulting from joint participation by a handler and a manufacturer or seller of a complementary commodity or product, and including the brands of both, the credit would be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less. For an advertisement resulting from joint participation by a handler and two manufacturers or sellers of complementary commodities or products, and including the brands of all three, the credit would be one-third of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

As previously mentioned, § 981.441(e) provides that credit for media expenditures shall be allowed for advertising conducted in Canada, and for a handler's unreimbursed media expenditures for advertising in any foreign country pursuant to a contract with the Foreign Agricultural Service, USDA, so long as this advertisement meets the requirements of paragraphs (c) and (g) and the limitations of paragraphs f (1) and (2) of § 981.441. Credit for media expenditures for advertising in Canada would be permitted in § 981.441(b). Thus, references to such advertising in Canada in § 981.441(e) are not necessary and would be deleted.

Section 981.441(e) would also be revised in that the provisions in paragraph (e)(2) would be transferred to paragraph (e)(1), and new provisions would be included in paragraph (e)(2). They provide that credit not to exceed in total 10 percent of his creditable obligation for advertising in each crop year, would be granted a handler for his media expenditures for advertising in 10 foreign countries. These countries are Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, The Netherlands, Sweden, Norway, Finland, Switzerland and Japan. Credit would be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising would apply to the crediting of advertising in these countries.

The proposal was also to delete, "Control" wherever it appears in § 981.441. The recent order amendments changed the name of the Board from the "Almond Control Board" to "Almond Board of California".

Finally, the first sentence of § 981.441(g) would be revised by adding at the beginning of the second sentence the following: "Except as provided in paragraph (b) * * *." In this way the proposed revision of § 981.441(b), which would permit handlers to file no later than September 30 of the subsequent crop year documentation with the Board for certain advertising expenditures made after June 30, would not conflict with an existing provision of § 981.441(g). Currently, that paragraph provides that no claim for assessment credit shall be granted if it is filed later than July 15 of the succeeding crop year. This conforming change was not included in the notice. However, § 981.441(g) is revised accordingly to conform with the revised § 981.441(b).

After consideration of all relevant matter presented including that in the notice, the information and recommendation submitted by the Board, and other available information, it is found that to amend the administrative rules and regulations as herein set forth will tend to effectuate the declared policy of the act.

Accordingly, Subpart-Administrative Rules and Regulations (7 CFR 981.441-981.481) is amended as follows:

1. In § 981.441, paragraphs (b), (d), (e) and (g) are revised to read as follows:

§ 981.441 Crediting for paid advertising.

* * * * *

(b) Each advertisement must be published, broadcast, or displayed during the crop year for which credit is requested, except: (i) that a maximum of five percent of the total handler creditable advertising obligation as of the June 30 redetermination report may be expended no later than September 1 of the subsequent crop year, and documentation therefor filed with the Board no later than September 30; and (ii) that a handler utilizing this extension certify to the Board, at time of redetermination, his planned expenditures during the extension period. The credit granted by the Board shall be that which is appropriate when compared to the applicable outlet rate published in the domestic or Canadian catalogs of Standard Rate and Data Service, or station or publisher or outdoor rate cards. In the case of claims for credit not covered by any such source, the Board shall grant the claim if it is consistent with rates for comparable outlets. For advertisements in countries other than the United States and Canada, paragraph (e) shall apply.

* * * * *

(d) Credit against the assessment obligation shall be granted:

(1) For 100 percent of the handler's payment to the advertising medium: (i) for a generic advertisement of California almonds; (ii) for an advertisement of the handler's brand of almonds; or (iii) when either of these advertisements includes reference to a complementary commodity or product; or (iv) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotional activities, including joint promotions, and the entire expenditure is borne by the handler.

(2) For an advertisement resulting from joint participation by a handler and a manufacturer or seller of a complementary commodity or product, and including the brands of both, the credit shall be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(3) For an advertisement resulting from joint participation by a handler and two manufacturers or sellers of complementary commodities or products, and including the brands of all three, the credit shall be one third of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(4) When almond products are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium, or the handler's pay-

ment thereof, whichever is less: *Provided,* That (i) the almond product does not contain nuts other than almonds, (ii) the almond product contains at least 50 percent raw shelled almonds by weight, and (iii) the almond product displays the handler's brand.

(e) Credit for media expenditures in a foreign country shall be granted:

(1) For the handler's unreimbursed media expenditures for advertising in any foreign country pursuant to a contract with the Foreign Agricultural Service, U.S. Department of Agriculture, provided the advertisements meet the requirements of paragraphs (c) and (d), and the limitations of paragraphs (f) (1) and (2), of this section.

(2) For a handler's media expenditures for advertising his brand of almonds in the following countries: Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, The Netherlands, Sweden, Norway, Finland, Switzerland and Japan, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising also shall apply to the crediting of advertising in these countries. The total of the foreign credit shall not exceed 10 percent of a handler's advertising assessment in each crop year.

* * * * *

(g) A handler must file a claim with the Control Board to obtain credit for an advertising expenditure. Except as provided in paragraph (b), no claim shall be granted if it is filed later than July 15 of the succeeding crop year. Each claim must be submitted on ABC Form 31 and accompanied by appropriate proof of performance as follows:

* * * * *

2. The word "Control" is deleted wherever it appears in § 981.441.

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

Dated: January 25, 1977, to become effective March 1, 1977.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.77-2884 Filed 1-27-77;8:45 am]

Title 9—Animals and Animal Products

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

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

PART 73—SCABIES IN CATTLE

Areas Quarantined and Released

These amendments quarantine a portion of Lubbock County in Texas because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the area quarantined.

The amendments release a portion of Weld County in Colorado from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded area. No areas in Colorado remain under quarantine.

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

In § 73.1a, in paragraph (a) relating to the State of Texas, a new paragraph (a) (4) relating to Lubbock County is added and paragraph (g) relating to the State of Colorado is deleted.

§ 73.1a Notice of quarantine.

(a) * * *

(4) The premises of the Lawson Feedlot comprised of the S.E. ¼ of sec. 22, block JS and the S.W. ¼ of sec. 13, block JS in Lubbock County.

* * * * *

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

Effective date: The foregoing amendments shall become effective January 24, 1977.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of cattle scabies, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as the amendments relieve restrictions, they are no longer deemed necessary to prevent the spread of cattle scabies and they should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 24th day of January 1977.

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

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

[FR Doc.77-2786 Filed 1-27-77;8:45 am]

PART 78—BRUCELLOSIS

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

BRUCELLOSIS AREAS

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 Noncertified Areas in § 78.22 because it has been determined that they no longer come within the definition of a Certified Brucellosis-Free Area in § 78.1(l):

Montgomery County in Iowa

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):

Barbour and Russell Counties in Alabama; Fremont County in Idaho; Delaware and Jones Counties in Iowa

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):

Pueblo County in Colorado; Effingham County in Illinois; Cedar, Floyd, Poweshiek, and Warren Counties in Iowa.

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

§ 78.20 Certified Brucellosis-Free Areas.

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

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

(b) *Specific Counties Within States.*

Alabama. Dale, Etowah, Geneva, Henry, Lee.

Arkansas. Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Clay, Cleveland, Columbia, Dallas, Drew, Fulton, Garland, Grant, Greene, Jackson, Johnson, Lafayette, Madison, Marion, Monroe, Montgomery, Newton, Ouachita, Perry, Pike, Polk, Prairie, Searcy, Sharp, Stone, Union, Woodruff, Yell.

Colorado. Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores,

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

Florida. Baker, Bay, Brevard, Calhoun, Dade, Dixie, Escambia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Leon, Liberty, Monroe, Okaloosa, Orange, Pasco, Santa Rosa, Seminole, Sumter, Taylor, Wakulla, Walton, Washington.

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

Idaho. Adams, Bear Lake, Benewah, Blaine, Boise, Bonner, Boundary, Camas, Canyon, Caribou, Clearwater, Custer, Idaho, Jerome, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Valley, Washington, Yellowstone National Park.

Illinois. Adams, Alexander, Bond, Boone, 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, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Shuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Winnebago, Woodford.

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

Kansas. Comanche, Doniphan, Ford, Gove, Graham, Greeley, Haskell, Hodgeman, Johnson, Lane, Logan, Marshall, Pawnee, Phillips, Riley, Scott, Sheridan, Thomas, Trego, Wallace, Washington.

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

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

Missouri. Audrain, Dallas, Douglas, Dunklin, Franklin, Gasconade, Hickory, Iron, Jackson, Laclede, Lewis, Miller, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

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

South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, 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, Cheatham, Claiborne, Davidson, Decatur, Dickson, Fentress, Grainger, Greene, Grundy, Hancock, Hardin, Jefferson, Johnson, Knox, Lake, Meigs, Morgan, Polk, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Warren, White.

Texas. Brewster, Childress, Comal, Crane, Ector, Gray, Hansford, Hartley, Hemphill, Irion, Jeff Davis, Kerr, Kimble, Lipscomb, Llano, Loving, Mason, Newton, Pecos, Reagan, Roberts, Sterling, Terrell, Val Verde, Ward, Winkler.

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

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, Camuy, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guayanilla, Gurabo, Hormigueros, Humacao, Isabela, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Morovis, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, 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, Nebraska, 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, Escambia, Fayette, Franklin, Greene, Hale, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Limestone, Lowndes, des, 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, Chicot, Clark, Cleburne, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Faulkner, Franklin, Hempstead, Hot Spring, Howard, Independence, Izard, Jefferson, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Miller, Mississippi, Nevada, Phillips, Poinsett, Pope, Pulaski, Randolph, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, Washington, White.

Colorado. Mesa, Yuma.

Florida. Alachua, Bradford, Broward, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Okeechobee, Osceola, Palm Beach, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Suwanee, Union, Volusia.

Georgia. Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, 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, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren, Webster, Whitfield, Wilcox, Wilkes, Worth.

Idaho. Ada, Bannock, Bingham, Bonneville, Butte, Cassia, Clark, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Lincoln, Madison, Minidoka, Twin Falls.

Illinois. Brown, Hardin, Pope, Williamson.

Iowa. Allamakee, Appanoose, Cerro Gordo, Cherokee, Crawford, Decatur, Delaware, Guthrie, Harrison, Jasper, Jones, Monroe, Ringgold, Sac, Sioux, Story, Union, Wayne.

Kansas. Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Cowley, Crawford, Decatur, Dickinson, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Franklin, Geary, Grant, Gray, Greenwood, Hamilton, Harper, Harvey, Jackson, Jefferson, Jewell, Kearney, Kingman, Kiowa, Labette, Leavenworth, Lincoln, Linn, Lyon, Marion, McPherson, Meade, Miami, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Saline, Sedgwick, Seward, Shawnee, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Wabaunsee, Wichita, Wilson, Woodson, Wyandotte.

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

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

Missouri. Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Daviess, De Kalb, Dent, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Jasper, Jefferson, Johnson, Knox, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, 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.

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

South Dakota. Jones, Stanley.

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

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, 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, Culberson, 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, Gillespie, Glasscock, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, 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, Martin, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Presidio, Rains, Randall, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Yoakum, Young, Zapata, Zavala.

Utah. Box Elder, Cache.

Wyoming. Lincoln.

Puerto Rico. Arecibo, Carolina, Guaynabo, Hatillo, Las Piedras, Naguabo.

§ 78.22 Noncertified areas.

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

(a) *Entire States.*

(b) *Specific Counties Within States.*

Iowa. Clay, Montgomery.

Puerto Rico. Vieques.

(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.)

Effective date: The foregoing amendments shall become effective January 28, 1977.

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

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

Done at Washington, D.C., this 24th day of January 1977.

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

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

[FR Doc.77-2787 Filed 1-27-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

SUBPART F—RESELLERS AND RETAILERS

EMERGENCY AMENDMENT ADOPTING SPECIAL RULE NO. 1 FOR SUBPART F

Correction

In FR Doc. 76-38499 appearing at page 1036 in the issue of Wednesday, January 5, 1977 the following correction should be made.

On page 1037, middle column in Appendix—Special Rule No. 1, paragraph numbered 2, the 13th line reading "seller in January 1977, February 1977 and" should be deleted.

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Docket No. 29626; Regulation PR-162, Amdt. 4]

PART 300—RULES OF CONDUCT IN BOARD PROCEEDINGS

Amendment to Reissuance of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. January 24, 1977 (Incorporate attached regulation.).

Effective: January 24, 1977.

Adopted: January 24, 1977.

This document amends a reissuance of the Board's Rules of Conduct in Board Proceedings, which are interim regulations. It is a response to comments from the public which we called for on the narrow issue of whether the provisions of §§ 300.2a and 300.7 of our regulations or § 300.2(d) of our former regulations unconstitutionally infringed upon First Amendment rights of persons dealing with Board matters and the public. We have concluded that the issues raised by the comments are substantial, that corrective action is warranted, and that the present § 300.2a should be replaced by a new provision directed generally to the elimination of specified conduct rather than the direct limitation of speech or communication.

By PR-154 (41 FR 34587, August 16, 1976) as amended by PR-160 (41 FR 48116, November 2, 1976) the Board reissued on an interim basis, effective October 25, 1976, Part 300 of its Procedural Regulations, Rules of Conduct in Board Proceedings (14 CFR Part 300). Coincidentally with the foregoing issuances, the Board also issued a Notice and a Supplemental Notice of Proposed Rulemaking (PDR-41, 41 FR 34650, August 16, 1976, and PDR-41A, 41 FR 48129, November 2, 1976).

Among other things, the notices called for comment on the provisions of § 300.2a, *Prohibited influence and solicitation,* and § 300.7, *Contacts with other government agencies,* both as set forth in PDR-41 and § 300.2, *Hearing cases; improper influence,* as set forth in the prior regulation. The notices also referred to the discussion of these provisions in the preambles to PR-154 and PR-160. As indicated in the preamble to the latter regulation serious constitutional issues were raised by public comment with respect to limitations on contacts with the media and limitations on the generation of support from third persons for the position of an interested person. We modified our interim regulation to limit their applicability in some of the challenged areas. Otherwise, we deferred consideration of such constitutional issues until receipt of comments on our proposed final rule, which were due on or before December 29, 1976.

Later, the Board determined to expedite its consideration of the constitutional issues to the extent feasible and therefore issued a Supplemental Notice calling for briefs, comments, or arguments on such issues on or before December 20, 1976 (PDR-41B, 41 FR 51036, November 19, 1976). In response thereto comments were filed by the Member Carriers of the National Air Carrier Association and by Reuben Robertson and Aviation Consumer Action Project. The Board finds that it can expedite its resolution of the constitutional issues by separating them from issues raised by other comments and acting upon them now.

The complaints presented to us are that § 300.2 of our prior regulation and §§ 300.2a and 300.7 of our interim regulation unconstitutionally infringe First Amendment rights of persons participating in Board proceedings and the public by direct restraint upon communications to third persons, including the media, and by indirect restraints, arising from both overbreadth and vagueness, which place a "chill" or "chilling effect" on free speech, without appropriate justification, so that constitutional barriers to such regulation are exceeded.

The Board's former regulation, its present interim regulation, and the interim regulation established herein (which we presently intend to include in our final regulation) were and are intended to protect the integrity of our processes rather than to restrain or or inhibit free speech, whether or not such speech is critical of the Board. That the Board's intention has governed its administration of these provisions is evidenced by the fact that there has been no serious objection to them on constitutional or other grounds for the many years they have been in effect. Nevertheless, this fact would not justify their continuance in the face of the present comments which appear to be well taken, as a matter of law, in many areas. In light of the legal precedents striking down restraints on free speech,[1] and the fact that problems under our old Rules of Conduct have arisen infrequently,[2] we have determined to replace § 300.2a of our interim regulation, which embodies much of our prior regulation, with a new provision which plainly restricts conduct rather than speech or communication and limits itself to conduct which is unlawful or poses a serious imminent threat to the fair conduct or completion of a Board proceeding or matter.

Specifically, we have prohibited conduct which attempts, directly or indirectly, to affect the judgment of the Board, any of its Members, or its employees by any unlawful means such as (1) the use of deception; (2) the payment of money or other consideration; or (3) any other action or plan which poses a serious imminent threat to disrupt or interfere with the full and fair completion of a proceeding or matter before the Board. Any such conduct will be deemed a violation of the part and brought within the scope of § 300.20 and the remedial actions enumerated therein.

It is the steadfast opinion of the Board that the foregoing prohibitions will neither unconstitutionally restrain or "chill" protected expression or communication nor open up proceeding to destruction through permitted speech. On the contrary, we believe that with such conduct prohibited and with the responsible and intelligent action we can and do anticipate from persons interested in and participating in Board proceedings, there is no occasion to expect difficulties in maintaining the integrity of our proceedings. In view of the Board's obligation to insure such a result, we shall be vigilant in scrutinizing the conduct of our proceedings and in rectifying difficulties that may arise either on an ad hoc basis or by further rulemaking proceedings. We are also of the view that, to the fullest extent possible, the protections afforded by this part should be applicable equally to nonhearing and rulemaking matters, as the regulation provides. Simple fairness requires that such matters, which are of growing number and importance, should not be subjected to attempts to affect the agency's judgment by the means we have prohibited.

Accordingly, the Board hereby amends its Reissuance of Part 300 of its Procedural Regulations (14 CFR Part 300) effective January 24, 1977, as follows:

1. Section 300.2a is revised as follows:

§ 300.2 Prohibited conduct.

It is improper that any person interested in a proceeding before the Board attempt, directly or indirectly, to affect the judgment of the Board or any of its Members or employees by any unlawful means such as the use of deception, the payment of money or other consideration, or any other action which poses a serious imminent threat to disrupt or interfere with the full and fair comple-

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[1] We find particularly instructive *Chicago Council of Lawyers* v. *Bauer,* 522 F. 2d 242 (7th Cir. 1975); and the cases cited therein.

[2] See the Board's Opinion in the *Service to Saipan Case,* Docket 24421 (attached to Order 75-11-59) disapproved by the President on other grounds, where we stated after an elaborate investigation of carrier conduct problems, "These circumstances have rarely arisen in prior Board cases and are unlikely to arise in the same fashion in future cases." (Mimeo, p. 3.)

tion of the proceeding. Any such conduct is prohibited and will be deemed a violation of this part within the meaning of § 300.20.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2823 Filed 1-27-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2857]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Interstate Check Systems, Inc. and Gerald A. McColloum

Subpart—Collecting, assembling, furnishing or utilizing consumer reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-1 Confidentiality, accuracy, relevancy, and proper utilization; 13.382-1 (a) Fair Credit Reporting Act; 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1127-36; 15 U.S.C. 1601, et seq.)

In the Matter of Interstate Check Systems, Inc., a corporation, and Gerald A. McColloum, individually and as an officer of said corporation.

Consent order requiring an Indianapolis, Ind., credit reporting firm, among other things to cease collecting, assembling, furnishing or utilizing consumer reports in violation of the Fair Credit Reporting Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows: [1]

ORDER

It is ordered, That respondents Interstate Check Systems, Inc., a corporation, its successors and assigns, and its officer Gerald A. McColloum, individually and as an officer of said Interstate Check Systems, Inc., and respondents' officers, agents, representatives and employees, hereafter collectively "respondents", directly or through any corporation, subsidiary, division or other device, in connection with the collecting, preparation, assembling or furnishing of consumer reports, as "consumer report" is defined in section 603(d) of the Fair Credit Reporting Act (Pub. L. 91-508, 15 U.S.C. section 1601 et seq.), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person unless such report is furnished: (a) To a person whom respondent then has reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving each consumer reported upon; or

(b) In response to the order of a court having jurisdiction to issue such order; or

(c) In accordance with the written instructions of the consumer to whom the report relates.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list and cannot be determined without the use of a unique identifier, such as social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under section 604 of the Act, as provided by section 607 of the Act.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporate respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this Order.

[1] Copies of the Complaint and Decision and Order filed with the original document.

Commissioner Dole did not participate by reason of absence.

The Decision and Order was issued by the Commission December 17, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2890 Filed 1-27-77;8:45 am]

[Docket No. 9039]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Martin Marietta Corp., et al.

Subpart—Combining or conspiring: § 13.400 To discriminate or stabilize prices through basing point or delivered price systems; § 13.405 To discriminate unfairly or restrictively in general; § 13.431 To exchange future price information; § 13.432 To fix and maintain uniform freight charges. Subpart—Selling and quoting on systematic, price matching basis: § 13.2190 Basing points and delivered price systems.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 33 Stat. 719, as amended; 15 U.S.C. 45)

In the Matter of Martin Marietta Corporation, a Corporation; Ideal Basic Industries, Inc., a Corporation; and OKC Corp., a Corporation.

Consent orders requiring three portland cement manufacturers, Martin Marietta Corporation, Rockville, Md., Ideal Basic Industries, Inc., Denver, Colo., and OKC Corp., Dallas, Tex., among other things to offer, for a ten-year period, a point of origin price for bulk portland cement to a customer each time a delivered price is offered. Customers are given the option of furnishing or arranging transportation from the mill at the point of origin price. The Ideal order defines the point of origin price as the delivered price less the actual freight which would have been incurred to the destination. The other two orders define the point of origin price as the delivered price less the unabsorbed or average freight factor included in it. Further, the orders prohibit the exchange of price information among competitors and control of the place of use of portland cement which has been sold to a customer.

The orders to cease and desist, including further orders requiring report of compliance therewith, are as follows: [1]

ORDER AS TO MARTIN MARIETTA CORPORATION

I

Definitions

For purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

[1] Copies of the Complaint and Decisions and Orders filed with the original document.

"Point of origin price"—price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

"Delivered price"—price set by respondent for purchases by a customer at a designated destination point. "Delivered price" shall include a cost of transportation factor, which factor shall consist of either (i) the non-absorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer, *provided* that, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

ORDER AS TO IDEAL BASIC INDUSTRIES, INC.

I

Definitions

For the purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price"—a price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the actual transportation costs which would be incurred by the seller if the sale were made on a delivered basis.

"Delivered price"—a price set by respondent for purchases by a customer at a designated destination point, which price includes the cost of transportation to that designated destination point.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer: *Provided,* That, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

ORDER AS TO OKC CORP.

I

Definitions

For purposes of this Order, the following definitions shall apply:

"Portland cement"—a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price"—price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

"Delivered price"—price set by respondent for purchases by a customer at a designated destination point. "Delivered price" shall include a cost of transportation factor, which factor shall consist of either (i) the non-absorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

II

It is ordered, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the federal or state agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer: *Provided,* That, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

III

It is further ordered, That, consistent with the definitions contained in Part I of this Order, nothing contained in this Order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

IV

It is further ordered, That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this Order shall be notified of the terms of this Order.

V

It is further ordered, That respondent, pursuant to § 3.61 of the Commission's rules, within ninety (90) days after this Order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this Order.

The Decisions and Orders were issued by the Commission December 20, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.76-2801 Filed 1-27-77;8:45 am]

Title 21—Food and Drugs

CHAPTER 1—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 75N-0050]

PART 314—NEW DRUG APPLICATIONS

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

Procedures for Establishing a Bioequivalence Requirement

Correction

In FR Doc. 77-568 appearing at page 1624 in the issue of Friday, January 7, 1977 the following correction should be made:

On page 1628, third column, the line appearing immediately above paragraph "23" should be deleted and the following should be inserted: "are not bioequivalent drug products.".

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Mepivacaine Hydrochloride Injection

The Food and Drug Administration approves a new animal drug application (100-703V) filed by Winthrop Laboratories, Division of Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, proposing safe and effective use of mepivacaine hydrochloride injection as a local anesthetic for horses. The approval is effective January 28, 1977.

The Commissioner of Food and Drugs is amending Part 522 (21 CFR Part 522) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the 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, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 522 is amended by adding a new § 522.1372 to read as follows:

§ 522.1372 Mepivacaine hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 20 milligrams of mepivacaine hydrochloride.

(b) *Sponsor.* See No. 000024 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) It is intended for use in horses as a local anesthetic for infiltration, nerve block, intra-articular and epidural anesthesia and topical and/or infiltration anesthesia of the laryngeal mucosa prior to ventriculectomy.

(2) It is administered as follows: for nerve block, 3 to 15 milliliters; for epidural anesthesia, 5 to 20 milliliters; for intra-articular anesthesia, 10 to 15 milliliters; for infiltration, as required; for anesthesia of the laryngeal mucosa prior to ventriculectomy, by topical spray, 25 to 40 milliliters, by infiltration, 20 to 50 milliliters.

(3) Not for use in horses intended for food.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation shall be effective January 28, 1977.

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

Dated: January 21, 1977.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-2778 Filed 1-27-77;8:45 am]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Subpart A—Oral Dosage Forms

AMOXICILLIN TRIHYDRATE FOR ORAL SUSPENSION

The Food and Drug Administration approves a new animal drug application (NADA 55-085V) filed by Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, proposing safe and effec-

tive use of amoxicillin trihydrate for oral suspension in dogs and cats for treating certain bacterial infections of the respiratory tract, genitourinary tract, gastrointestinal tract, skin, and soft tissues. The approval is effective January 28, 1977.

The Commissioner of Food and Drugs is amending Part 540 (21 CFR Part 540) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the 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, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 540 is amended by adding new § 540.103b to read as follows:

§ 540.103b Amoxicillin trihydrate for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate for oral suspension is a mixture of amoxicillin trihydrate with one or more suitable and harmless colorings, flavorings, buffers, sweetening ingredients, preservatives, stabilizers, and suspending agents. When reconstituted as directed in the labeling, it contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin per milliliter. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the amount of amoxicillin that it is represented to contain. Its moisture content is not more than 3.0 percent. Its pH, when reconstituted as directed in the labeling, is not less than 5.0 and not more than 7.5. It passes the identity test. The amoxicillin trihydrate used conforms to the standards prescribed by § 440.3(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter; in addition, this drug shall be labeled "amoxicillin for oral suspension."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The batch for potency, moisture, pH, and identity.

(ii) Samples required:

(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Assay for potency by either of the following methods; however, the results obtained from the iodometric assay shall be conclusive:

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured representative portion of the sample into a suitable volumetric flask and dilute to volume with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Mix well. Further dilute an aliquot with solution 3 to the reference concentration of 0.1 microgram of amoxicillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter, preparing the sample as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured aliquot (usually a single dose) into an appropriately sized volumetric flask and dilute to volume with 1 percent potassium phosphate buffer, pH 6.0 (solution 1). Mix well. Further dilute with solution 1 to the prescribed concentration.

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

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

(4) *Identity.* Proceed as directed in § 436.311 of this chapter, preparing the sample solution as follows: Place a 2-gram weighed portion of the sample into a 50-milliliter volumetric flask. Dilute to volume with 0.1*N* hydrochloric acid and shake for 5 minutes.

(c) *Conditions of marketing*—(1) *Specifications.* The drug conforms to the requirements for certification as in paragraph (a) of this section.

(2) *Sponsor.* No. 000029 in § 510.600 (c) of this chapter.

(3) *Conditions of use.* (i) *Dogs.* (*a*) The drug is used for the treatment of infections caused by susceptible strains of organisms as follows: respiratory tract (tonsilitis, tracheobronchitis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* genitourinary tract (cystitis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* gastrointestinal tract (bacterial gastroenteritis) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis;* bacterial dermatitis caused by *Staphylococcus aureus, Streptococcus, spp.,* and *Proteus mirabilis;* and soft tissues (abscesses, lacerations, and wounds) caused by *Staphylococcus aureus, Streptococcus spp., Escherichia coli,* and *Proteus mirabilis.*

(*b*) It is administered to dogs at a dosage of 5 milligrams per pound of body weight twice a day, for 5 to 7 days or 48 hours after all symptoms have subsided.

(ii) *Cats.* (*a*) The drug is used for the treatment of infections caused by susceptible strains of organisms as follows: upper respiratory tract due to *Staphylococcus spp., Streptococcus spp., Hemophilus spp., Escherichia coli, Pasteurella spp.,* and *Proteus mirabilis;* genitourinary tract (cystitis) due to *Staphylococcus aureus, Streptococcus spp., Escherichia coli, Proteus mirabilis,* and *Corynebacterium spp.;* gastrointestinal tract due to *Escherichia coli, Proteus spp., Staphylococcus spp.,* and *Streptococcus spp.;* skin and soft tissue (abscesses, lacerations, and wounds) due to *Staphylococcus spp., Streptococcus spp., Escherichia coli,* and *Pasteurella multocida.*

(*b*) It is administered to cats at a dosage of 50 milligrams (5 to 10 milligrams per pound) once daily for 5 to 7 days or 48 hours after all symptoms have subsided.

(iii) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation shall be effective January 28, 1977.

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

Dated: January 21, 1977.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-2777 Filed 1-27-77;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES

[T.D. ATF-41; Reference Nos. 277 & 287]

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

PART 181—COMMERCE IN EXPLOSIVES

Black Powder

On December 22, 1975, the Bureau of Alcohol, Tobacco and Firearms published in the FEDERAL REGISTER (40 FR 59207) an amended notice of proposed rulemaking to amend 27 CFR Part 178 (Commerce in Firearms and Ammunition) and Part 181 (Commerce in Explosives) for the purpose of implementing Pub. L. 93-639 concerning black powder. This notice superseded an earlier notice of proposed rulemaking relative to the black powder issue, published on May 20, 1975 (40 FR 21961), by (1) proposing more liberal requirements regarding the preparation and disposition of a transaction record than what had initially been proposed, and (2) eliminating the controls on percussion caps and other igniters, which also had initially been proposed.

BACKGROUND

Pub. L. 93-639 removed the exemption in 18 U.S.C. 845(a)(5) on black powder in amounts of five pounds or less, whether commercially or otherwise

manufactured and regardless of its intended use. In lieu of the five-pound exemption, the amended law inserted an exemption for black powder in quantities of fifty pounds or less, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers; however, the new exemption is specifically restricted to (1) commercially manufactured black powder, and (2) black powder intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4). 18 U.S.C. 921(a)(4) was also amended to include language exempting antiques such as muzzle-loading cannons used for sporting, recreational, or cultural purposes, from the definition of "destructive device."

The House Judiciary Committee Report No. 93-1570, relating to the new law, placed several expectations on the Bureau. The report made it clear that the intent of Congress was to (1) require retailers to maintain records of their sales of exempted black powder, and (2) require that sporting users identify themselves on the purchase of exempted black powder. This latter expectation was for the purpose of insuring that only sporting users had access to black powder under the new statutory exemption.

In meeting these expectations, the Bureau's proposed regulations required first, that retailers of black powder obtain from the purchaser an executed transaction form which shows the purchaser's name and address and certification that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Also, to comply with the intent of Congress that only antique firearms enthusiasts have access to exempted black powder, the purchaser would provide the retailer with proof of identity that he is, in fact, the person executing the transaction form.

Further, the law contemplates that a dealer will maintain records establishing that the purchaser intends to use black powder for the purposes specified in the law. We must, therefore, require that all dealers be licensed to permit ATF officers to enter business premises and inspect records and thereby enable ATF to maintain a check on the distribution of black powder. Moreover, in order to protect the public safety, approval of magazines for the storage of black powder by persons engaged in the business of selling black powder is essential.

Summary of Comments

Initially, a 30-day period was afforded the public for commenting on the amended proposals; however, to allow more time to evaluate and respond to our proposed regulations, notice of an extension of the comment period for an additional 45 days was published January 27, 1976 (41 FR 3877). Over 1100 comments were received from the public, including letters from sporting magazines; Congressional inquiries as a result of constituent mail; group petitions; and comments from individual antique firearms enthusiasts. The vast majority of those persons commenting were opposed to our proposed regulations on black powder. In fact, a large percentage were opposed to any regulations whatsoever on the issue. Most were of the opinion that ATF had exceeded its authority with respect to our interpretation of the new law. Although the House of Representative Committee Report No. 93-1570, which accompanied the legislation approved by the full Congress, specifically addressed the matter of ATF regulations that would be necessary to implement the bill, many persons still felt that any controls placed on the sale of black powder in quantities of fifty pounds or less were inappropriate.

Those comments which were of a more specific nature objected to (1) the requirement that all dealers in black powder, regardless of the quantity being handled, obtain an explosives dealer's license, and (2) the requirement that a record, on which the purchaser identifies himself and certifies that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, be maintained by dealers on all transactions covered by the new exemption.

As explained in the background above, because of the expectations set forth in the House Committee Report, the intent of Congress in passing Pub. L. 93-639 was clearly to place certain restrictions on sales of black powder so as to facilitate enforcement of the law and prosecution of violators. Thus, the Bureau has not changed its basic position concerning the licensing of all black powder dealers, certification by purchasers of exempted black powder, or maintenance of records of transactions in black powder, as originally proposed. Persons who sell black powder, regardless of the quantities involved, must be licensed and must maintain records of sales. Also, purchasers of black powder must identify themselves on purchase of black powder and must certify that the black powder is intended to be used for lawful purposes.

Changes to the Amended Notice

In view of the fact that our regulations are imposing new requirements on certain persons, a period of ninety days from the date the regulations are published in the Federal Register is being granted before the regulations take effect. This period allows time for affected persons to familiarize themselves with the new provisions and take any necessary actions. Several sections in Part 181 are amended to reflect the date the regulations become effective and make it clear that this part fully applies to any person engaging in business or operations requiring a license or permit under Part 181 after the effective date. A non-licensed person who has been dealing in black powder in quantities not exceeding five pounds and who wishes to continue dealing in black powder, will be required to file an application for an explosives dealer's license prior to the effective date of these regulations in order to sell black powder after that date. A person who files the required application before the effective date, may sell black powder under 18 U.S.C. Chapter 40, as amended by Pub. L. 93-639, without a license until such time as his application is acted upon by the Bureau.

(Sections 181.1 and 181.45 amended; sections 181.122, 181.123, 181.124, and 181.125 further amended.)

At this time, we are also amending several sections in Part 181 to eliminate references to the effective date of the Organized Crime Control Act of 1970 (October 15, 1970) and the implementing regulations (February 12, 1971). It is no longer necessary to provide specific procedures for those persons who were engaged in business or operations without a license or permit prior to such law and implementing regulations, and who subsequently were required to meet all the provisions of the Organized Crime Control Act of 1970 and Part 181.

(Secs. 181.1, 181.45, and 181.109 amended; secs. 181.122, 181.123, 181.124, and 181.125 further amended.)

In addition to the above editorial changes, we are revising the procedures for reporting thefts or losses of explosive materials. The law requires that all persons report thefts or losses to ATF and local authorities within 24 hours after the discovery of such thefts or losses. Regulations provide that licensees or permittees report thefts or losses to ATF within 24 hours of discovery on Form 4712, Report of Theft or Loss—Explosive Materials, and that all other persons notify ATF in writing within the 24-hour period following discovery. Timely receipt of a report of a theft or loss of explosive materials is critically important to a criminal investigation. Thus, to insure that appropriate ATF officials are informed as soon as possible, we are requiring that the nearest ATF office be notified by telephone within 24 hours of the discovery of a theft or loss, in addition to reporting by mail on Form 4712 or in writing. (§ 181.30 amended.)

Specific Changes to the Regulations

In consideration of the foregoing, the proposed regulations, as published in the Federal Register on December 22, 1975, are hereby adopted subject to the following changes:

Section 178.11 is amended as follows:

§ 178.11 Meaning of terms.

* * * * *

Destructive device. (a) Any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than 4 ounces, (4) missile having an explosive or incendiary charge of more than one-quarter ounce, (5) mine, or (6) device similar to any of the devices described in the preceding paragraphs of this definition; (b) any type of weapon (other than a shotgun or a shotgun shell which the Director finds is generally recognized as particularly

suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (c) any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) or (b) of this section and from which a destructive device may be readily assembled. The term shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signalling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10, United States Code; or any other device which the Director finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational, or cultural purposes.

Paragraph (c) of § 181.1 is revised to (1) delete language governing persons engaged in business or operations under this part on October 15, 1970, and (2) add language to govern persons engaged in business or operations under this part on January 4, 1975.

§ 181.1 Scope of regulations.

* * * * *

(c) *Persons engaged in business or operations in black powder on January 4, 1975.* This part fully applies to persons engaged in business or operations in black powder on January 4, 1975, requiring a license or permit under this part, who have filed an application for such license or permit prior to April 28, 1977, and who are continuing such business or operations pending final action on such application.

Section 181.11 is amended as follows:

§ 181.11 Meaning of terms.

* * * * *

Assistant Regional Commissioner. Whenever used in this part shall mean a regional director as defined in this section.

* * * * *

Regional director. A regional director who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco, and Firearms.

* * * * *

Section 181.22 is revised as follows:

§ 181.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.* The permittee or licensee, on specific approval by the Director as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions when he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that such alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part.

Where the permittee or licensee desires to employ an alternate method or procedure, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The permittee or licensee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(b) *Emergency variations from requirements.* The Director may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations—

(1) Will afford security and protection that are substantially equivalent to those prescribed in this part;

(2) Will not hinder the effective administration of this part; and

(3) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the licensee or permittee thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever, in the judgment of the Director, the effective administration of this part is hindered by the continuation of such variation. Where the licensee or permittee desires to employ such variation, he shall submit a written application, in triplicate, to the regional director, for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons therefor. Variations shall not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the Director via telephone.

(c) *Retention of approved variations.* The licensee or permittee shall retain, as part of his records available for examination by alcohol, tobacco and firearms officers, any application approved by the Director under the provisions of this section.

Section 181.26 is amended as follows:

§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) No person, other than a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials: *Provided,* That the provisions of this paragraph shall not apply to—

(1) The transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (i) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (ii) the provisions of § 181.105(c) are fully complied with, and (iii) the purchaser is not otherwise prohibited under paragraph (b) of this section from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce; or

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed fifty pounds, if (i) the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and (ii) the provisions of § 181.105(g) are fully complied with.

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761)

or any depressant or stimulant drug as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321 (v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

Section 181.30 is amended to change the procedure for reporting thefts or losses of explosive materials.

§ 181.30 Reporting theft or loss of explosive materials.

Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone to the nearest ATF office and on Form 4712 in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities. Any other person who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery thereof, report such theft or loss by telephone and in writing to the nearest ATF office. Such theft or loss shall also be reported to appropriate local authorities.

Section 181.41(a) is amended as follows:

§ 181.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under the provisions of this subpart: *Provided*, That it is not necessary to obtain such permit if the user intends to lawfully purchase—

(1) Explosive materials from a license in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a continguous State, or

(2) Commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

* * * * *

Section 181.45 is amended to (1) delete language governing persons engaged in business or operations under this part on October 15, 1970, and (2) add language to govern persons engaged in business or operations under this part on January 4, 1975.

§ 181.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with the service center director for the internal revenue district in which the applicant is to do business an application, Form 4705, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4705 may be obtained from any regional director or from any district director.

(b) Any person, except as provided in § 181.41(a), who intends to acquire explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file with the service center director for the internal revenue district in which is located his legal residence or principal place of business an application, Form 4707, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4707 may be obtained from any regional director or from any district director.

(c) Any person engaged in business or operations as a dealer in, or as an importer or manufacturer or user of, black powder requiring a license or permit under this part, and who was engaged in such business or operations on January 4, 1975, and who has filed an application for a license or permit under the provisions of this part prior to April 28, 1977, may continue such business or operations pending final action on his application.

Paragraph (g) is added to § 181.105 as follows:

§ 181.105 Distributions to nonlicensees and nonpermittees.

* * * * *

(g) Notwithstanding any other provision of this section, a licensed importer, licensed manufacturer, or licensed dealer, or a licensed manufacturer-limited or permittee disposing of surplus stocks, may sell or distribute commercially manufactured black powder in quantities of fifty pounds or less to a nonlicensee or nonpermittee if:

(1) The black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, and

(2) The nonlicensee or nonpermittee furnishes to the licensee the transaction record, Form 5400.3, required by § 181.130.

Section 181.106(a) is amended as follows:

§ 181.106 Certain prohibited distributions.

(a) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows or has reason to believe does not reside in the State in which the licensee's place of business is located: *Provided*, That the foregoing provisions of this paragraph shall not apply to:

(1) The distribution of explosive material to a resident of a State contiguous to the State in which the licensee's place of business is located, if the requirements of § 181.105(c) are fully met, or

(2) The purchase of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, if the requirements of § 181.105(g) are fully met.

* * * * *

Section 181.108 is revised as follows:

§ 181.108 Importation.

(a) Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Such status shall be established by the licensed importer or permittee furnishing to the customs officer a certified copy of his license or permit (see § 181.104).

(b) A nonlicensee or nonpermittee may import or bring into the United States commercially manufactured black powder in quantities not to exceed fifty pounds. Upon submitting to the customs officer completed Form 5400.3, certifying that the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, black powder may be released from customs custody. The disposition of the executed Form 5400.3 shall be in accordance with the instructions on the form.

(c) The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under 27 CFR Part 47.

Section 181.109 is amended to delete language referring to the February 12, 1971, effective date of the regulations implementing the Organized Crime Control Act of 1970.

§ 181.109 Identification of explosive materials.

Each licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The

marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging: *Provided,* That with respect to explosive materials of small size not suitable for marking on the individual item (for example, blasting caps), it shall only be necessary to place such identification marks on the containers used for their packaging.

Section 181.122 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for importers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as importers under this part on January 4, 1975, and (3) add paragraph (f) as follows:

§ 181.122 Records maintained by importers.

(a) Each licensed importers of explosive materials shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of an importer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his business to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed importer. (See also § 181.127.)

* * * * *

(f) Each licensed importer shall maintain separate records of sales or other distribution made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.123 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for manufacturers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as manufacturers under this part on January 4, 1975, and (3) add a paragraph (f) as follows:

§ 181.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a manufacturer of black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed manufacturer. (See also § 181.127.)

* * * * *

(f) Each licensed manufacturer shall maintain separate records of sales or other distributions made to nonlicensees or nonpermittees of commercial manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.124 is further amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for dealers under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as dealers under this part on January 4, 1975, and (3) add paragraph (g) as follows:

§ 181.124 Records maintained by dealers.

(a) Each licensed dealer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take such an inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part, or in the case of a dealer in black powder who was not required to obtain a license under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensed dealer. (See also § 181.127.)

* * * * *

(g) Each licensed dealer shall maintain separate records of the sales or other distributions made to nonlicensees or nonpermittees of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner prescribed by § 181.130.

Section 181.125 is amended to (1) delete from paragraph (a) reference to the February 12, 1971, effective date for recordkeeping requirements for manufacturers-limited and permittees under this part, (2) insert in paragraph (a) recordkeeping requirements for persons engaged in business or operations as manufacturers-limited or permittees under this part on January 4, 1975, and (3) amend paragraphs (b) and (c) as follows:

§ 181.125 Records maintained by licensed manufacturers-limited and permittees.

(a) Each licensed manufacturer-limited and each permittee shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. Such inventory shall be made (1) at the time of commencing business, which shall be the effective date of the license or permit issued upon original qualification under this part, or in the case of a manufacturer-limited of black powder or a permittee using black powder who was not required to obtain a license or permit under this part prior to January 4, 1975, such an inventory shall be taken as of April 28, 1977, or at the time of commencing business subsequent thereto; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at such other times as the regional director may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the regional director, and the duplicate shall be retained by the licensee or permittee. (See also § 181.127.)

(b) A licensed manufacturer-limited disposing of surplus stocks of explosive materials to other licensees or to permittees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.123(c)(1). Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each licensed manufacturer-limited shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be

maintained in the form and manner prescribed by § 181.130.

(c) Each permittee shall record in a permanent record the manufacturers' marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, the daily acquires, the date of such acquisition, and the name, address and license number of the person from whom explosive materials were obtained. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such acquisition. A permittee disposing of surplus stocks of explosive materials to other permittees or to licensees shall record in the permanent record not later than the close of the next business day following the date of the disposition, the information prescribed in § 181.124(d). Each permittee shall maintain separate records of dispositions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126. Each permittee shall maintain separate records of dispositions of surplus stocks of commercially manufactured black powder in quantities not to exceed fifty pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices. Such records shall be maintained in the form and manner as prescribed by § 181.130.

* * * * *

Section 181.126 (c) and (f) are amended as follows:

§ 181.126 Explosives transaction record.

* * * * *

(c) Form 4710 shall be completed in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements in paragraph (d) of this section, and the copy shall be forwarded in accordance with the instructions on the form, on or before the close of business on the business day next succeeding that on which the transaction occurs.

* * * * *

(f) A licensee or permittee may obtain, upon request, a supply of Form 4710 from the Director.

Section 181.130 is added as follows:

§ 181.130 Transaction record for black powder to be used in antique firearms or in antique devices.

(a) A licensee or permittee shall not sell or otherwise distribute to a nonlicensee or nonpermittee commercially manufactured black powder in quantities of fifty pounds or less, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices, unless he records the transaction on Form 5400.3.

(b) Prior to the sale or other distribution of the black powder in paragraph (a) of this section to a nonlicensee or nonpermittee who is acquiring it under the provisions contained in § 181.105(g), the licensee or permittee so distributing the black powder shall obtain an executed Form 5400.3 from the distributee. The Form 5400.3 shall contain all the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 5400.3 shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements of paragraph (d) of this section.

(d) Each Form 5400.3 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000," the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other recordkeeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 5400.3 from the Director.

Section 181.141 is revised as follows:

§ 181.141 Exemptions.

(a) *General.* The provisions of this part shall not apply with respect to:

(1) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the U.S. Department of Transportation, and agencies thereof.

(2) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

(3) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof.

(4) Small arms ammunition and components thereof.

(5) The manufacture under the regulation of the military department of the United States of explosive materials for, or other distribution to or storage or possession by, the military or naval services or other agencies of the United States.

(6) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(7) The importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances.

(8) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under Subpart D, the provisions of this part shall not apply with respect to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers: *Provided,* That such black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16), or in antique devices, as exempted from the term "destructive device" in 18 U.S.C. 921(a)(4), and the provisions of §§ 181.105(g) and 181.130 are fully complied with.

(18 U.S.C. 847 (84 Stat. 959) and 18 U.S.C. 926 (82 Stat. 1226).)

Effective date: This Treasury decision becomes effective on April 28, 1977.

Signed: June 14, 1976.

REX D. DAVIS,
Director.

Approved: August 5, 1976.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.77-2817 Filed 1-27-77;8:45 am]

[Reference No. T.D. ATF-38]

PART 245—BEER

Correction

On December 30, 1976, the Bureau of Alcohol, Tobacco and Firearms published regulations [FR Doc. 76-382711] amending 27 CFR Part 245, Beer. Those regulations established procedures for qualified small brewers to pay tax at the $7 per barrel rate established by Pub. L. 94-529.

Two minor discrepancies appeared in that document in §§ 245.117a and 245.160. Paragraph (e) of § 245.117a should have contained the phrase "the close of", and paragraph (c) of § 245.160 should have contained the phrase "of tax"; these phrases were inadvertently omitted. As amended, § 245.117a(e) reads as follows:

§ 245.117a Semimonthly return.

* * * * *

(e) *Time for filing returns and paying tax.* The brewer shall file the semimonthly tax return, Form 2034 (5130.7), for each return period, with remittance, not later than the close of the last full calendar day of the return period next succeeding that period.

* * * * *

As amended, § 245.160(c) reads as follows:

§ 245.160 Refund or credit of tax on returned beer.

* * * * *

(c) *Rate of tax.* Brewers who have filed the notice required by § 245.110c and who have paid the tax on beer at the reduced rate of tax shall make claims

for refund, credit, or relief of tax based upon the lower rate of tax. * * *

Signed: January 24, 1977.

REX D. DAVIS,
Director.

[FR Doc.77-2818. Filed 1-27-77;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

PART 1951—GRANTS FOR IMPLEMENTING APPROVED STATE PLANS

Civil Penalties for First Instance Violations; Employers in Farming Operations With Ten or Fewer Employees; Small Employer Survey; Effect on State Grants; Interpretation

• 1. *Purpose.* Notice is hereby given pursuant to the Administrative Procedure Act, 5 U.S.C. 552(a) (1) (D) and section 8(g) (2) of the Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) (29 U.S.C. 657(g) (2)) of the Department of Labor's interpretation of the funding limitations in Title I of the Department of Labor-Department of Health, Education, and Welfare Appropriations Act for Fiscal Year 1977 (Pub. L. 94-439) which became effective October 1, 1976, and will cease to be in effect September 30, 1977, unless extended. •

Pub. L. 94-439 places two limitations on the expenditure of funds for the Occupational Safety and Health Administration (hereinafter referred to as OSHA) by providing as follows:

> That none of the funds appropriated under this paragraph shall be obligated or expended for the assessment of civil penalties issued for first instance violations of any standard, rule, or regulation promulgated under the Occupational Safety and Health Act of 1970 (other than serious, willful, or repeated violations under section 17 of the Act) resulting from the inspection of any establishment or workplace subject to the Act, unless such establishment or workplace is cited, on the basis of such inspection, for 10 or more violations: *Provided further,* That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation and employs 10 or fewer employees.

Because of the one-year duration of the funding limitations of Pub. L. 94-439, this notice does not constitute an amendment to 29 CFR Parts 1903, 1904, and 1951. The purpose of this notice is to interpret the terms of those limitations and their relation to State plans approved under section 18 of the Act. However, in the case of any conflict between provisions of those parts and this notice, the provisions of this notice shall be controlling during fiscal year 1977 unless subsequently extended or provided otherwise by statute or regulation. Notice of the funding limitations has been prepared as a rulemaking document in order to give the public the most effective notice possible.

The Department of Labor appropriations acts for fiscal years 1975 and 1976 exempted employers employing ten or fewer employees from OSHA recordkeeping requirements, except with respect to the provisions of 29 CFR 1904.15 which require exempted small employers to report fatalities and multiple hospitalization accidents and also to participate in the Bureau of Labor Statistics' (hereinafter referred to as BLS) annual statistical survey if the small employers are selected by BLS for such participation. But the appropriations act for fiscal year 1977 (Pub. L. 94-439) did not include this recordkeeping exemption. The present OSHA recordkeeping regulation (29 CFR 1904.15) exempts employers employing seven or fewer employees. OSHA, however, intends to publish in the near future a proposal to amend the recordkeeping regulation to extend the existing exemption to employers of ten or fewer employees. In order to avoid any undue burden on small employers, pending any permanent change in the regulation, OSHA will continue treating employers with 8, 9, and 10 employees as exempt as was provided by the appropriations acts for fiscal years 1975 and 1976. However, as stated above, this exemption for small employers does not, as provided in § 1904.15, apply to those employers selected to participate in the BLS annual survey or to the requirement for reporting fatalities or multiple hospitalization accidents.

2. *Scope.* (a) The first funding limitation under Pub. L. 94-439 is applicable to all employers covered by the Act and will be implemented as follows:

(1) No penalty will be proposed for a first instance other-than-serious violation unless 10 or more total violations are cited. This "10 or more" includes all violations; that is, other-than-serious, serious, willful, repeated, and failure to abate, but does not include *de minimus* violations. If 10 or more violations are cited, all 10 are subject to proposed penalties to be calculated in accordance with the instructions in the Occupational Safety and Health Field Operations Manual (hereinafter referred to as the Manual).

(2) Civil penalties will be proposed in accordance with instructions in the Manual, for all notifications of failure to abate, serious, willful and repeated violations. In addition, if upon reinspection of a workplace, an employer is cited for a violation of the same subsection of a standard which was cited during a previous inspection, the alleged violation shall be treated as a second instance violation and may be accompanied by a proposed penalty regardless of whether the alleged violation is cited as other-than-serious. Citations which include second instance other-than-serious violations with penalties will be accompanied by a brief explanation to the employer as to the reason for the proposed penalty, if fewer than 10 violations are cited.

(3) Grouping of several violations of a single standard into a single alleged violation, and grouping of individual other-than-serious violations which, when considered together, would be a serious violation, will continue according to present policy in the Manual.

(4) The first limitation is applicable to all other-than-serious violations, including violations of the posting requirements under section 17(i) of the Act.

(5) If, as a result of an inspection, a citation was issued for 10 or more violations, and penalties were proposed for some or all of the other-than-serious violations and an amended citation is issued which brings the number of violations below 10, any remaining penalties for first instance other-than-serious violations will be eliminated on the amended citation.

(6) If both safety violations and possible health violations are found in an establishment, a citation will be issued as soon as possible for the safety violations and will not be held awaiting laboratory results. If laboratory results confirm any health violations, a second citation should be issued for the health violations found during the same inspection, but the number of violations will not be totalled from both citations to determine whether 10 or more exist for penalty purposes. Penalties will be proposed, or not be proposed, based on the number of violations in each separate citation.

(7) The limitation will also be applicable to OSHA actions involving penalties in proceedings before the Occupational Safety and Health Review Commission.

(b) The second funding limitation (farm-operations) under Pub. L. 94-439 is applicable to all employers covered by the Act who are engaged in a farming operation and employ 10 or fewer employees and will be implemented as follows:

(1) For the purposes of this limitation, a "farming operation" is defined as any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or related activities conducted by a farmer, on sites such as farms, ranches, orchards, dairy farms or similar farming establishments.

(2) No inspection will be made of an employer engaged in a farming operation if he employs 10 or fewer employees in all his workplaces. Members of the immediate family of the farm employer are not regarded as employees in making the initial determination as to that number.

(3) At the beginning of any inspection the Compliance Safety and Health Officer (hereinafter referred to as the CSHO) will initially determine, by inquiring of the employer, how many employees he has on the day of the inspection. If the employer states that he employs ten or fewer employees, the CSHO will then inquire as to the maximum number of employees he employed at

any one time during the twelve months immediately prior to the inspection date. If the employer has had more than 10 employees at any one time during the previous 12 months the CSHO will proceed with the inspection. Where an inspection is conducted based on 11 or more employees employed at the time of the inspection or in the twelve month period prior to the date of the inspection, any further enforcement action will be continued regardless of the number of employees employed at any later date.

(4) Any inspection made of an employer engaged in a farming operation who has more than 10 employees, is subject to all of the provisions of the first funding limitation as stated in 2(a) above.

(5) No consultation services will be provided to any employer engaged in a farming operation if the employer has 10 or fewer employees.

3. *State plans.* Under section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1), a State plan is required to provide a program for the enforcement of State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. The provisions of the funding limitations in Pub. L. 94-439 do not limit State authority for the assessment of civil penalties issued for first instance violations of any standard, rule or regulation promulgated under State law, or to enforce any standard, rule, regulation or order, under State law, which is applicable to any person who is engaged in a farming operation and employing 10 or fewer employees.

However, States which engaged in activities for which Federal funds may not be expended under Pub. L. 94-439 will not be reimbursed under sections 23(g) and 24(b) of the Act for any share of funds expended by the State for those activities. States receiving 23(g) and 24(b) grant funds must be able to demonstrate that no portion of the grant funds has been used for the activities prohibited in the funding limitations.

4. *Effective date.* This notice is effective and will continue to be applicable for as long as the funding limitations in Pub. L. 94-439 remain in effect, unless modified or revised by the Assistant Secretary in the FEDERAL REGISTER.

(Sec. 8(g)(2), 84 Stat. 1600 (29 U.S.C. 657(g)(2); 5 U.S.C. 552(a)(1)(D)))

Signed at Washington, D.C., this 19th day of January 1977.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.77-2378 Filed 1-19-77;5:06 pm]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER N—PROCEDURES

RULES OF PRACTICE; MISCELLANEOUS AMENDMENTS

AGENCY: United States Postal Service (Judicial Officer).

ACTION: Final Rule.

SUMMARY: The Judicial Officer of the Postal Service hereby issues a complete revision of the rules of practice in proceedings relative to mailability. In addition, the law on ex parte communications is made applicable to the mailability rules of practice and to certain other rules of practice issued by the Judicial Officer.

EFFECTIVE DATE: January 28, 1977.

FOR FURTHER INFORMATION CONTACT: George Davis 202-245-4385.

SUPPLEMENTARY INFORMATION: Acting in accordance with authority delegated to him by 39 CFR 224.1(c)(5)(ii)(D) the Judicial Officer of the Postal Service adopts a complete revision of 39 CFR Part 953, the rules of practice in proceedings relative to mailability. This is done in order to conform these rules with 123.37 of the Postal Service Manual, which provides for administrative appeals of unfavorable mailability decisions in accordance with 39 CFR Part 953.

The Judicial Officer also amends 39 CFR Parts 951, 952, 953, 954, 957, 958 and 959 to make applicable to proceedings under these rules the law on ex parte communications enacted by section 4 of Pub. L. 94-409, 90 Stat. 1246, 1247 (September 13, 1976).

Accordingly, 39 CFR is amended as follows:

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

1. Part 951 is amended by adding new § 951.8 reading as follows:

§ 951.8 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

2. Part 952 is amended by adding new § 952.34 reading as follows:

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

3. Part 953 is revised to read as follows:

Sec.
953.1 Authority for rules.
953.2 Initiation.
953.3 Notice of Appeal.
953.4 Service of Notice of Appeal, Reply.
953.5 Reply.
953.6 Hearings.
953.7 Compromise and informal dispositions.
953.8 Default; appearances.
953.9 Location of hearing.
953.10 Change of place of hearing.
953.11 Presiding officers.
953.12 Proposed findings of fact.
953.13 Initial decision.
953.14 Appeal.
953.15 Final agency decision.
953.16 Expedition.
953.17 Disposition.
953.18 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing with the Docket Clerk of a Notice of Appeal.

§ 953.3 Notice of appeal.

The Notice of Appeal shall: (a) Be accompanied by a copy or description of the determination or ruling upon which the appeal is based; (b) specify the character or content of the matter sought to be mailed; (c) request review of the mailability determination, and (d) specify whether an oral hearing is desired or whether the matter is to be submitted on the written record.

§ 953.4 Service of Notice of Appeal, Reply.

Upon receipt of the Notice of Appeal, the Docket Clerk shall issue a notice setting forth the date for filing a Reply to the Notice of Appeal, the date of the hearing, if one is requested, and the name of the presiding officer. This notice, together with copies of the Notice of Appeal, shall be sent promptly to the General Counsel and to the postmaster at the place of mailing to be served upon the appellant or his agent. A receipt for service upon the appellant shall be obtained and forwarded immediately to the Docket Clerk. If, after 3 days, the postmaster or his agent can find no person to accept service of the notice, it may be delivered in the same manner as other mail addressed to the appellant. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice shall be forwarded to the Docket Clerk and such statement shall constitute evidence of service.

§ 953.5 Reply

The General Counsel shall Reply to the Notice of Appeal within the time established unless extended by the presiding officer for good cause shown. The Reply shall be filed in triplicate with the Docket Clerk. Allegations not answered shall be deemed admitted.

§ 953.6 Hearings.

(a) The Federal Rules of Evidence (28 App. U.S.C. (Supp. V, 1975)) shall be applicable to the hearings conducted under this part, except that the rules may be relaxed to the extent that the presiding officer deems proper to assure a fair hearing. Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the prehearing conference, if any, subject to

such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 953.7 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed for such period of time as may be necessary to accommodate settlement discussions between the parties.

§ 953.8 Default; appearances.

If no Reply to the Notice of Appeal is filed, the General Counsel shall be deemed in default and the Judicial Officer shall instruct the postmaster of the disposition to be made of the matter. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing, the presiding officer shall receive the evidence of the party appearing and render a decision.

§ 953.9 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at the headquarters of the Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260, on the date set in the notice.

§ 953.10 Change of place of hearing.

Not later than the date fixed for the filing of the Reply, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 953.11 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law (5 U.S.C. 3105) or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings (§ 953.16, *infra*) are requested by either party.

§ 953.12 Proposed findings of fact.

Unless otherwise ordered, proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing.

§ 953.13 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected.

§ 953.14 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 953.15 Final Agency decision.

The Judicial Officer shall render a final Agency decision or refer the matter to the Postmaster General for decision. The decision shall be served upon the parties and the postmaster.

§ 953.16 Expedition.

For the purpose of further expedition the parties may, with the concurrence of the Judicial Officer, agree to waive any of these procedures. When the Judicial Officer presides at the hearing, he shall render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with § 953.14.

§ 953.17 Disposition.

Mail matter found to be nonmailable shall be held at the post-office where detained for a period of 15 days from the date of the Postal Service decision, unless extended by the Judicial Officer. During that time the mailer may make application for the withdrawal of the matter. The Judicial Officer shall order the matter returned to the mailer or otherwise disposed of in accordance with 39 U.S.C. 3001(b).

§ 953.18 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF SECOND-CLASS MAIL PRIVILEGES

4. Part 954 is amended by adding new § 954.26 reading as follows:

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

5. Part 957 is amended by adding new § 957.28 reading as follows:

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO RENT OR RENEW POST OFFICE BOXES AND THE CLOSING OF POST OFFICE BOXES

6. Part 958 is amended by adding new § 958.14 reading as follows:

§ 958.14 Ex parte communications.

The provisions of 5 U.S.C. § 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

7. Part 959 is amended by adding new § 959.31 reading as follows:

§ 959.31 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

EDWARD F. LUSSIER,
Judicial Officer.

[FR Doc.77-2795 Filed 1-27-77;8:45 a.m.]

Title 41—Public Contracts and Property Management

CHAPTER 114—DEPARTMENT OF THE INTERIOR

PART 114-43—UTILIZATION OF PERSONAL PROPERTY

Miscellaneous Amendment

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and 40 U.S.C. 486(c), Subpart 114-43.1 of Chapter 114, Title 41 of the Code of Federal Regulations, is amended as set forth below.

This amendment relates only to matters of internal Department practice. It is, therefore, determined that the public rulemaking procedure is unnecessary and this amendment shall become effective on January 28, 1977.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation

of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

ALBERT C. ZAPANTA,
Assistant Secretary of the Interior.

JANUARY 17, 1977.

This amendment redesignates 114-43.104 as 114-43.001 to comply with the FPMR format, and the definitions of terms are revised.

1. The Table of Contents is amended to delete 114-43.104 through 114-43.104-52 and add new entries to read as follows:

Sec.
114-43.000 Scope of part.
114-43.001 Definitions.
114-43.001-50 Available personal property.
114-43.001-51 Reportable personal property.
114-43.001-52 Nonreportable personal property.

Subpart 114-43.1—General Provisions

114-43.101 Surveys.
114-43.102 Reassignment of property within executive agencies.
114-43.102-50 Holding bureau utilization.
114-43.102-51 Screening nonreportable available property.
114-43.102-52 Screening reportable available property.
114-43.102-53 Documentation of transfers.

2. Section 114-43.000 is revised and §§ 114-43.001 through 114-43.001-52 are added to read as follows:

§ 114-43.000 Scope of part.

The provisions of this part are applicable to all personal property except—

(a) Automatic data processing equipment and supplies, and

(b) Books, periodicals, other publications, and related material.

§ 114-43.001 Definitions.

§ 114-43.001-50 Availability personal property.

"Available personal property" means any personal property that is no longer needed by the holding activity, and is available for use by other Interior activities.

§ 114-43.001-51 Reportable personal property.

"Reportable personal property" means any personal property that has been determined to be excess to the needs of the Department of the Interior and is required to be reported to the General Services Administration.

§ 114-43.001-52 Nonreportable personal property.

"Nonreportable personal property" means any personal property that has been determined to be excess to the needs of the Department of the Interior and is not required to be reported to the General Services Administration except for sale purposes.

§ 114-43.104 [Deleted]

Section 114-43.104 is deleted in its entirety.

[FR Doc.77-2804 Filed 1-27-77;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 16; Amdt. 99-10]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Conflict of Interest; Revision; Corrections

On January 14, 1977 (42 FR 3118), the Secretary of Transportation caused to be published revisions to the Department of Transportation's regulations governing conflict of interest. This document remedies an omission and makes several technical corrections as follows:

1. In Appendix C, Section II, after the caption "Federal Aviation Administration" and before the caption "Office of General Aviation," the following is inserted:

Associate Administrators
Deputy Associate Administrators

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

*Chief, Program Review Staff

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT AND REVIEW

*Aviation Policy Specialist

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR AIR TRAFFIC AND AIRWAY FACILITIES

* Special Assistant
* Chief, Program Management Staff
*Program Analyst, GS-14/15

OFFICE OF CHIEF COUNSEL

*Chief Counsel
*Deputy Chief Counsel
*Assistant Chief Counsel
*Special Assistant to the Chief Counsel
*Special Counsel for Regulations
*Deputy Assistant Chief Counsel
*Branch Chiefs
*Chief, Legislative Staff
*Chief, Environmental Law Staff
Attorney Advisor, Procurement Legal Division, GS-13/15

OFFICE OF CIVIL RIGHTS

Director
Deputy Director
Civil Rights Specialist, GS-13 and above, engaged in Contract Compliance Review

OFFICE OF PUBLIC AFFAIRS

*Assistant Administrator

OFFICE OF AVIATION SAFETY

Assistant Administrator

2. In § 99.735-11(A)(2) delete the word "his" in the second and third lines.

3. In § 99.735-15(a), last line:

(a) Delete the letter "s" from the word "paragraphs."

(b) Change the letter "(i)" to "(h)."

(c) Delete the following word, letter and parentheses: "* * * and (j) * * *".

4. In § 99.735-15(c)(2), delete the brackets "[" "]" after the words "interest" and "participation."

5. In § 99.735-35(b), delete the word "his" from the thirty-fifth line.

6. In § 99.735-37, delete the bracket, "]", from the third line.

7. In Appendix B, Section (s) change the citation 2 U.S.C. 4411 to 4411.

Issued in Washington, D.C., on January 19, 1977.

WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation.

[FR Doc.77-2730 Filed 1-27-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Eighth Rev. S.O. 1234]

PART 1033—CAR SERVICE

Distribution of Freight Cars

At a Session of the INTERSTATE COMMERCE COMMISSION, Railroad Service Board, held in Washington, D.C., on the 24th day of January, 1977.

It appearing, That there is an acute shortage of freight cars for transporting shipments of citrus pulp, citrus pellets, fertilizer, phosphate (dried or ground, treated or untreated, fish meal, grain, grain products, *salt, soybeans, soybean products, cottonseed hulls, peanut hulls, or soybean hulls; that certain tariff provisions require the use of cars of specified cubic or weight carrying capacities; that the carriers are unable to furnish sufficient such cars to transport shipments of such weights; that cars of lesser capacity are available; that such cars cannot be used because of certain tariff provisions; that there is immediate need to use every available car for transportation of fertilizer and grain; that the inability of the carriers to furnish sufficient fertilizer and grain cars results in great economic loss; and that present regulations and practices with respect to the use, supply, control, moevment, and distribution of fertilizer and grain cars are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days notice.

It is ordered, That:

§ 1033.1234 Distribution of freight cars.

(a) Subject to the concurrence of the shipper, carriers may substitute a sufficient number of smaller cars for larger cars ordered to transport shipments of citrus pulp, citrus pellets, fertilizer, phosphate (dried or ground, treated or untreated, fish meal, grain, grain products, salt,[1] soybeans, soybean products, cottonseed hulls, peanut hulls or soybean hulls regardless of tariff requirements specifying minimum cubic or weight carrying capacity. (See exceptions (b) and (c).)

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions requiring the use of twenty-five or more cars per shipment.

(c) *Exception.* This order shall not apply to shipments subject to tariff pro-

[1] Addition.

visions which require that cars be furnished by the shipper.

(d) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished and loaded as authorized by Section (a) of this order shall be the rates and minimum weights applicable to the larger cars ordered.

(e) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by Section (a) of this order shall place the following endorsement on the bill of lading and on the waybills authorizing movement of the car:

Car of (____) cu. ft. and of (____) lbs. or greater capacity ordered. Smaller cars furnished authority Eighth Revised ICC Service Order No. 1234.

(f) *Concurrence of Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the shipper.

(g) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C., 20423. Requests for such exception must be submitted in writing, or confirmed in writing, and must clearly state the points at which such exceptions are requested and the reason therefor.

(h) *Rules and Regulations Suspended.* The operation of all rules, regulations, or tariff provisions is suspended insofar as they conflict with the provisions of this order.

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

(j) *Effective date.* This order shall become effective at 12:01 a.m., January 25, 1977.

(k) *Expiration date.* This order shall expire at 11:59 p.m., February 28, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2).)

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

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2886 Filed 1-27-77;8:45 am]

[Ex Parte No. MC-19 (Sub-No. 29)]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Practices of Motor Common Carriers of Household Goods (Performance Reports); Correction

In Ex Parte No. MC-19 (Sub-No. 19 (a)) *Practices of Motor Common Carriers of Household Goods (Consumer Protection—Kingpak Carriers)*, order entered January 5, 1976 (not printed), the Interstate Commerce Commission amended § 1056.7(b) of its General Rules and Regulations (49 CFR 1056.7(b)) by excepting so-called "Kingpak" and "pack and crate" carriers from the requirement that motor common carriers of household goods must file an annual performance report (described in § 1056.7(b)) with the Commission. In that proceeding, the Commission also combined former § 1056.7(b)(3)(1) with former § 1056.7(b)(3)(k), renumbered former § 1056.7(b)(3)(a) through (k) as § 1056.7(b)(3)(i) through (xi), respectively, and reworded certain of those subsections. Subsection 1056.7(b)(3)(ix) was reworded to make it clear that household goods carriers must list in their performance reports the percentage of shipments on which claims were filed due to carrier delay. Subsection 1056.7(b)(3)(x) was reworded to make it clear that carriers must report the average number of consecutive days required to settle loss or damage claims. Subsection 1056.7(b)(3)(xi) was phrased to make it clear that the figures sought in that subsection related to a common whole figure, i.e., all those claims settled during the calendar year. Other minor changes were made to the wording of § 1056.7(b)(3)(i) through (viii). Notice of these changes was published in the FEDERAL REGISTER on January 12, 1976 at page 1742.

By order entered November 19, 1976, in Ex Parte No. MC-19 (Sub-No. 29) *Practices of Motor Common Carriers of Household Goods (Performance Reports)*, 125 M.C.C. 766, the Commission determined, among other things, that § 1056.7(b) should be modified by extending the deadline for the filing of performance reports with this Commission to March 31 of each year. The Commission further determined that § 1056.7(b)(3)(x) [referred to in that proceeding as § 1056.7(b)(3)(j)] should be revised to require carriers to furnish more specific information relating to the length of time required for the settlement of claims for loss or damage. Notice of these changes was published in the FEDERAL REGISTER on December 7, 1976, at page 53485.

In drafting the amendments to § 1056.7(b) in Ex Parte No. MC-19 (Sub-No. 29), inadvertently overlooked were the amendments previously made to that subsection in Ex Parte No. MC-19 (Sub-No. 19(a)). Therefore, this notice reflects the proper wording of § 1056.7(b) to reflect the amendments made to that subsection in both of the above-described proceedings. Thus, § 1056.7(b) now provides that motor common carriers of household goods (with the exception of "Kingpak" and "pack and crate" carriers, who are not required to file such reports) must file annual performance reports on or before March 31 of each year. Subsections 1056.7(b)(3)(ix) and (xi) are phrased to conform to the changes made by the Commission in Ex Parte No. MC-19 (Sub-No. 19(a)). Subsection 1056.7(b)(3)(x) has been rewritten to reflect the rephrasing of that subsection by the Commission in both Ex Parte No. MC-19 (Sub-No. 19(a)) [in which the Commission required household goods carriers to list the average number of consecutive days required to settle claims for loss or damage] and in Ex Parte No. MC-19 (Sub-No. 29) [in which the Commission required household goods carriers to list the percentage of claims filed within certain time periods, in addition to the average length of time required to settle claims for loss or damage].

No additional substantive changes have been made to § 1056.7(b).

(49 U.S.C. 301, 302, 304, 308, 316, and 320, and 5 U.S.C. 552, 553, and 559.)

By the Commission.

ROBERT L. OSWALD,
Secretary.

Accordingly, 49 CFR 1056.7(b) has been modified so that it now should read as follows:

§ 1056.7 Information for shippers.

* * * * *

(b) Each motor common carrier of households goods, *except* carriers engaged in the transportation of household goods solely under authority which reads: "Used household goods, restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization or unpacking", shall on or before March 31 of each year cause to be filed with the Commission's Bureau of Operations, Washington, D.C., and each of the Commission's regional offices, a summary of its service record for the previous calendar year providing the following information:

(1) Name of motor carrier and domicile address.

(2) I.C.C. MC number.

(3) By type of account (c.o.d. shipper, Department of Defense, and national accounts and other Government traffic) specify the following:

(i) Number of shipments delivered and number of estimates on such shipments.

(ii) Percentage of shipments on which there occured a 10 percent or greater over-estimation of charges.

(iii) Percentage of shipments on which there occured a 10 percent or greater under-estimation of charges.

(iv) Percentage of shipments picked up more than 5 days later than specified in the order for service.

(v) Percentage of shipments picked up 1 to 5 days later than specified in the order for service.

(vi) Percentage of shipments delivered more than 5 days later than specified in the order for service.

(vii) Percentage of shipments delivered 1 to 5 days later than specified in the order for service.

(viii) Percentage of shipments on which a $50 or greater claim for loss or damages was filed.

(ix) Percentage of shipments delivered on which a claim was filed for damage or expenses resulting from carrier delay.

(x) (A) Average number of consecutive days required to settle claims for loss or damage (for claims settled during the calendar year).

(B) Percentage of claims for loss or damage settled within 30 days of filing (for claims settled during the calendar year).

(C) Percentage of claims for loss or damage settled within 60 days of filing (for claims settled during the calendar year).

(D) Percentage of claims for loss or damage settled more than 60 days from the date of filing (for claims settled during the calendar year).

(xi) The percentage of claims settled during the calendar year which were settled:

(A) Prior to institution of a law suit by the shipper to recover damages.

(B) After the institution of a law suit by the shipper and prior to the entering of a final judicial decree.

(C) Subsequent to the entering of a final judicial decree.

Copies of this report shall be served upon potential shippers as provided in paragraph (a) of this section. Carriers shall have available supporting documission's Bureau of Operations upon reof such statistics and shall make such documentation available to this Commission's Bureau of Operations upon request. Subjective evaluations by the carrier of its performance may be appended to the objective statistics required above, but on separate pages so as not to obscure in any way the statistical data required by this section.

[FR Doc.77-2887 Filed 1-27-77;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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

[Docket No. AO-354-A2]

CELERY GROWN IN FLORIDA

Supplemental Notice of Hearing on Proposed Amendment of Marketing Agreement and Order

This notice is supplemental to the notice of hearing which was published in the January 13, 1977, issue of the FEDERAL REGISTER (42 FR 2691), regarding a public hearing to be held with respect to a proposed amendment of marketing agreement and Order No. 967, both as amended, regulating the handling of celery grown in Florida.

Subsequent to the publication of the notice of hearing, the Florida Celery Committee unanimously recommended the following proposal as the method of determining Base Quantities rather than that set forth in Proposal No. 4 in the notice published in the January 13 FEDERAL REGISTER. This proposal has not received the approval of the Secretary of Agriculture.

The proposal is as folows:

Amend § 967.37 to read as follows:

§ 967.37 Base quantities.

(a) Base Quantities shall be those which have been established by the Florida Celery Committee for the 1976–77 season and as recorded on December 15, 1976.

* * * * *

Signed at Washington, D.C., on January 26, 1977.

WILLIAM T. MANLEY,
Deputy Administrator
Program Operations.

[FR Doc.77-2950 Filed 1-27-77;8:45 am]

[7 CFR Part 1260]

[Docket No. BRIA-1]

BEEF RESEARCH AND INFORMATION

Recommended Decision and Opportunity to File Written Exceptions

Correction

In FR Doc. 77-2240, appearing at page 4476 in the issue for Tuesday, January 25, 1977, the following changes should be made:

1. Between the fifth and sixth lines of the second full paragraph on page 4481, first column, insert the words, "projects to be undertaken, and it is".

2. Replace the last two lines of the first full paragraph on page 4483, first column with, "-ual has owned the animal from birth to slaughter.".

3. The next to last word in the fourth line of § 1260.163 on page 4487, third column, should read, "demand".

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

SPECIAL RULE NO. 8 FOR SUBPART C PROVIDING ENTITLEMENT BENEFITS FOR IMPORTED NO. 2 HEATING OIL

Notice of Proposed Rulemaking and Public Hearing

On January 18, 1977 FEA issued a notice (42 FR 4525; January 25, 1977) providing for public hearings in Minneapolis, Minnesota, and Boston, Massachusetts, and for the filing of written comments with respect to the current price levels for and the adequacy of supplies of middle distillates. The public hearings will be held on Friday, January 28, 1977 and will be continued to Saturday, January 29, if necessary. FEA's announced intention in soliciting public comments on these issues was to provide the agency with background information as to any supply or pricing problems that may arise this heating season, particularly in the North Central and Northeastern states, so that FEA would be able to anticipate and take appropriate action should any such problems develop.

In this notice, FEA invited comments as to whether any regulatory action by FEA was required at this time and, if required, what type of modifications to FEA's regulatory programs would be most appropriate. In this connection, FEA requested comments as to whether the reimposition of controls on a partial or total basis was appropriate and whether, for example, entitlement benefits should be extended to imported middle distillates.

Since the issuance of this notice, FEA has received advice from numerous persons in the North Central and North East regions as to severe potential supply problems for No. 1 fuel oil in the North Central region and No. 2 fuel oil in the North East region. FEA was informed that stocks of No. 1 fuel oil in the North Central region had declined, due to the severity of the winter and to difficulties in transporting that product into the region. In response to the potential supply problems for No. 1 fuel oil in the North Central region in particular, FEA issued an emergency amendment on January 24, 1977 that provided FEA with the specific authority to require refiners to adjust their yields of kerosene-base aviation fuel to levels that permit them to supply that product at a specified allocation fraction, thereby increasing their production and supplies of No. 1 fuel oil. As of the date of this notice, pursuant to the authority set forth in this emergency amendment, FEA has issued orders to six refiners with respect to nine refineries owned by them. FEA is also advised that stocks of middle distillates in the North East region declined by twenty percent during the first two weeks of January.

Due to the extraordinarily high level of demand for No. 2 heating oil caused by the continuing unusually severe winter, FEA has now determined that it should also receive public comment on a specific proposal to extend entitlement benefits to imports of No. 2 heating oil to forestall possible supply problems or preclude severe price increases if the supplies must be made available from imported product. Entitlement benefits for No. 2 heating oil could be expected to induce increased importation of No. 2 heating oil and, thereby, relieve pressures on domestic refineries which are already producing at a very high level of capacity utilization. The extension of entitlement benefits for No. 2 heating oil would also inhibit any tendency for prices of domestically refined No. 2 heating oil to rise to imported product price levels if there is a significantly higher than normal level of imports.

In the January 18 notice of public hearing, FEA did request comments on the level or levels in the distribution system at which the recent price increases for middle distillates have taken place and on whether the current price levels are justified, taking into account normal seasonal increases and the higher costs of any imports into the particular region. FEA will utilize information received at the Boston and Minneapolis hearings, as well as under the comment procedures provided in this proceeding, to make its final determination.

PROPOSED ENTITLEMENT BENEFITS FOR IMPORTED NO. 1 HEATING OIL

Therefore, FEA is hereby proposing the extension of entitlement benefits to imports of No. 2 heating oil in the months February and March 1977 into PAD Districts I through IV. The per barrel entitlement value to be awarded to these imports is proposed as 65% of the applicable per barrel crude oil entitlement value under the entitlements program for the month in which the import takes place. FEA is proposing this 65% entitlement value in conformity with its December 23, 1976 proposal as to the interrelation of the import program and certain changes to FEA's entitlements program with respect to residual fuel oil imports.

In that proposal, FEA set forth its preliminary determination that the proper advantage for domestic refiners refining imported crude oil as compared with offshore refiners was 84 cents per barrel. Thus, to calculate the appropriate entitlement value for purposes of this proposal, FEA has assumed that No. 2 heating oil imports are subject to the 10.5 cent per barrel import tariff, but that such imports are not effectively subject to the 63 cents product import fee, since any fees due have been for the most part offset by tariffs payable as to residual fuel oil imports not subject to the fee. FEA has also assumed that the effective level of import fees and tariffs on crude oil approximates 10.5 cents per barrel, since only slightly in excess of 30% of crude oil imports is subject to the 21 cents per barrel import fee and these fees are offset by the tariff on crude imports. Thus, it appears necessary at this stage to implement the full 84 cents per barrel differential through the entitlements program. Based on a projected $2.40 per barrel crude oil entitlement value for February 1977 (which utilizes the November 1976 value of $2.16 and takes into acount the January 1 OPEC increase), it would be necessary to grant importers $1.56 per barrel, or approximately 65% of $2.40, which will provide domestic refiners with the appropriate 84 cents per barrel advantage.

If adopted, this proposal would be implemented by the addition of a Special Rule No. 8 to the appendix to Subpart C of Part 211. The Special Rule proposed hereby would treat imports of No. 2 heating oil into PAD Districts I through IV in the same fashion that imports of residual fuel oil into the East Coast market are currently provided for under Section 211.67(a)(3). In other words, the importer of record would be the firm eligible to receive an entitlement issuance with respect to the import of the product. Imports from the U.S. Virgin Islands, as is the case with imports of residual fuel oil, would not be eligible for entitlement benefits. Since FEA is not aware of any existing or potential No. 2 heating oil supply or pricing problems in either PAD District V or Puerto Rico, imports into those areas are not proposed to be included in the coverage of the Special Rule.

FEA specifically invites comments on whether imports in the month of April 1977 should also be eligible for entitlement benefits and as to how FEA can be assured that any entitlement benefits awarded under these procedures will be passed through to consumers in the form of current price reductions that anticipate the entitlement revenues to be received for the particular imports. In this latter context, FEA does not believe that it would be appropriate to provide domestic refiners and marketers with these entitlement benefits without reasonable assurances that the benefits would flow through to consumers this heating season, starting with appropriate billing adjustments effective from February 1, 1977. In addition, FEA requests comments on whether other middle distillates, such as No. 2-D diesel fuel, kerosene, and No. 1 oils should also be eligible for import entitlements. Finally, FEA wishes to receive comments as to whether adoption of this proposal would assist domestic refiners in converting their production to yield more motor gasoline, thus enabling gasoline stocks to be increased to normal levels prior to the high demand summer driving season.

Section 7(c)(1) of the FEAA provides that FEA shall, before promulgating proposed regulations affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency ("EPA") may provide written comments concerning the impact of such regulations on the quality of the environment. Such comments are required to be published concurrently with or as part of the notice of proposed rulemaking.

Under section 7(c)(2) of the FEAA, the prior review required by section 7(c)(1) may be waived for a period of 14 days if there is an emergency situation which requires taking action at a date earlier than would permit the EPA the five day opportunity for prior comment required under section 7(c)(1). Notice of any such waiver must be given to the EPA and filed with the FEDERAL REGISTER with the notice of proposed or final FEA action and must include an explanation of the reasons for such waiver together with supporting data and factual background information.

Pursuant to section 7(c)(2) of the FEAA, FEA hereby waives the requirements of section 7(c)(1) of the FEAA concerning prior review by EPA of the environmental impact of this rulemaking. This waiver is based on an emergency situation which, as explained above, may very well mandate that FEA take immediate steps to ensure adequate supply and equitable prices to users of No. 2 heating oil. A copy of this notice has been sent concurrent with its issuance to the Administrator for his comments.

In accordance with Executive Order 11821 and OMB Circular A-107, FEA is considering the inflationary impact of this proposal.

PUBLIC HEARING AND WRITTEN COMMENT PROCEDURES

A public hearing on this proposal will be held beginning at 9:30 a.m., on Monday, February 7, 1977, in *Room* 5041, Federal Building, 1200 Pennsylvania Avenue N.W., Washington, D.C., to receive comments from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., Wednesday, February 2, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Friday, February 4, 1977. Each person selected to be heard will be so notified by FEA before 5:30 p.m., e.s.t., Thursday, February 3, 1977, and must submit 100 copies of his or her statement to Executive Communications, FEA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, before 5:30 p.m., e.s.t., Friday, February 4, 1977.

FEA reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., e.s.t., Friday, February 4, 1977. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to this proposal to Executive Communications, Federal Anergy Adminis-

tration, Box KO, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to Executive Communications, FEA, with the designation "Entitlement Benefits for Imported No. 2 Heating Oil." Fifteen copies should be submitted. All comments received by 4:30 p.m., Monday, February 7, 1977, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, in accordance with the procedures stated in 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332 and Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94385; E.O. 11790, 39 FR 23185; E.O. 11933, 41 FR 36641.)

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

Issued in Washington, D.C., January 26, 1977.

DAVID G. WILSON,
Acting General Counsel.

The appendix to Subpart C of Part 211 is amended by the addition of a Special Rule No. 8 to read as follows:

SPECIAL RULE NO. 8

1. *Scope.* This Special Rule provides, for the months February and March 1977, for the issuance of entitlements under § 211.67 with respect to imports of No. 2 heating oil into PAD Districts I through IV.

2. *Entitlement issuances for middle distillate imports.* (a) For purposes of subparagraph (3) of paragraph (a) of § 211.67, imports of No. 2 heating oil into PAD Districts I–IV in the months of February and March 1977 (other than imports into the United States customs territory from the U.S. Virgin Islands) shall be considered an eligible product, and any firm that imports No. 2 heating oil into PAD Districts I through IV for sale or use in those Districts, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license shall be considered an eligible firm. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

(b) The number of entitlements issuable under paragraph (a) above shall be equivalent to sixty-five (65%) percent of the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(a)) in that month with respect to the inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to the number of barrels of eligible product imported by that eligible firm.

3. *Reporting requirements.* The reporting requirements set forth in paragraph (j) of § 211.66 shall apply with respect to eligible firms' imports of No. 2 heating oil in the months February and March 1977.

4. *Provisions of Subpart C.* The provisions of Subpart C of Part 211 shall remain in full force and effect except as expressly modified by the provisions of this Special Rule.

[FR Doc.77-3018 Filed 1-26-77;4:36 pm]

[10 CFR Part 212]

PRODUCTION AND SALE OF "IMPUTED STRIPPER WELL CRUDE OIL" FROM UNITIZED PROPERTIES

Proposed Rulemaking and Public Hearing; Correction

On January 19, 1977 the Federal Energy Administration ("FEA") gave notice of a proposed rulemaking and public hearing to consider a proposal to amend 10 CFR 212.75 so as to compute volumes of "imputed stripper well crude oil" produced and sold from unitized properties on a percentage basis. In that Notice FEA indicated that requests to make oral presentations must be received by FEA before 4:30 p.m. on Wednesday, January 26, 1977, and that witnesses would be notified by 4:30 p.m. on Friday, January 28, 1977.

Inasmuch as the January 19 Notice did not appear in the FEDERAL REGISTER until January 25, 1977 42 FR 4491, FEA hereby extends the period for requests to make oral presentations. Such requests must be received by FEA before 4:30 p.m., Tuesday, February 1, 1977; witnesses will be notified by 4:30 p.m., Thursday, February 3, 1977. The public hearing will be held, as scheduled, on Friday, February 11, 1977. In all other respects, the Notice remains unchanged.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

JANUARY 25, 1977.

[FR Doc.77-2815 Filed 1-25-77;3:27 pm]

EXPORT-IMPORT BANK OF THE UNITED STATES

[12 CFR Part 405]

RULES GOVERNING PUBLIC OBSERVATION OF EXIMBANK MEETINGS

Implementation of Government in Sunshine Act

In accordance with the Government in the Sunshine Act, 5 U.S.C. 552b, and to implement the provisions of that act, Eximbank proposes to amend Title 12 of the Code of Federal Regulations by adding a new Part 405.

Written comments concerning these proposed regulations are invited from interested persons. Comments should be presented in writing to the Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW, Washington, D.C. 20571. An original and four conformed copies should be filed with the General Counsel and should disclose the name, title, mailing address and telephone number of the person submitting the comments. All written comments received no later than February 28, 1977, will be considered. Such written comments will be made available until that date for public inspection at the Office of the General Counsel of Eximbank during regular business hours.

The purpose of new Part 405 of Title 12 of the Code of Federal Regulations is to implement sections (b) through (f) of the Government in the Sunshine Act, 5 U.S.C. 552b (b) through (f), and they are made pursuant to section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g). They recognize that the public is entitled to the fullest practicable information regarding the decision-making processes of Eximbank, while at the same time the rights of individuals and the ability of Eximbank to carry out its statutory responsibilities should be protected.

Pursuant to the Export-Import Act of 1945, as amended, 12 U.S.C. 635 et seq., Eximbank is directed "to aid in financing and to facilitate exports and imports and the exchange of commodities * * *" In carrying out this statutory mandate, Eximbank is required to provide financial assistance "* * * for specific purposes" i.e., for individual transactions involving the export of U.S. goods and services. Additional statutory provisions require that every transaction "in the judgment of the Board of Directors, offer reasonable assurance of repayment" and that "in authorizing any loan or guarantee, the Board of Directors * * * take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States". In order to do so, Eximbank draws upon information supplied by U.S. manufacturers, exporters, service organizations, financial institutions, and foreign borrowers and guarantors. Such information almost always involves information of the kind exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and is almost always revealed in discussions of each item on the agendas of the regularly scheduled meetings of the Board of Directors or the Executive Committee at which applications for loans, guarantees and insurance are considered. The exact wording of Exemption 4—"trade secrets and commercial or financial information obtained from a person and privileged or confidential"—was included in Exemption 4 of the Government in the Sunshine Act, 5 U.S.C. 552b(4). The Conference Report to the Government in the Sunshine Act indicates that the Exemption 4 contained therein is intended to be read in the same way as the Exemption 4 of the Freedom of Information Act. See Conference Report, Senate Report No. 94-1178, 94th Cong. 2d Session, August 27, 1976 at p. 15.

It should also be noted that in order to comply with its statutory mandate, Eximbank has made use on occasion of information of the kind that would be exempt from disclosure under Sections (8), (9)(A) and (10) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)

(8), (9) (A) and (10). Eximbank is likely to continue to do so in the future.

For these reasons, Eximbank has made a determination to close its regularly scheduled meetings by regulation as provided in § 405.2(b) below. At the same time, Eximbank recognizes that official Eximbank business may be jointly conducted or disposed of in meetings that are not regularly scheduled and will be open to public observation subject to the exemptions contained in the Sunshine Act. Although past practice indicates that non-regularly scheduled meetings rarely occur, nevertheless Eximbank has made provision for them as set out in § 405.2(c) below. In the event that such meetings could be closed pursuant to Sections (4), (8), (9) (A), or (10) of the Government in the Sunshine Act, as cited above, they will be governed by the procedures applicable to regularly scheduled meetings as provided in § 405.3 below. If they are closed pursuant to any other exemption, they will be governed by the procedures set out in § 405.4 below.

Regulations to implement sections (b) through (f) of the Government in the Sunshine Act will become effective on March 12, 1977.

The proposed regulations are set forth below.

Dated: January 25, 1977.

WARREN W. GLICK,
General Counsel.

PART 405—RULES GOVERNING PUBLIC OBSERVATION OF EXIMBANK MEETINGS

Sec.

405.1 Purpose, scope and definitions.
405.2 Closing meetings.
405.3 Procedures applicable to regularly scheduled meetings.
405.4 Procedures applicable to other meetings.
405.5 Certification by General Counsel.
405.6 Transcripts, recordings and minutes of closed meetings.
405.7 Relationship to Freedom of Information Act.

§ 405.1 Purpose, scope and definitions.

(a) Consistent with the principles that: (1) The public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government, and

(2) The rights of individuals and the ability of the Export-Import Bank of the United States to carry out its statutory responsibilities should be protected, this Part is promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g), and specifically implements sections (b) through (f) of said Act, 5 U.S.C. 552b (b) through (f).

(b) The term "meeting" means any meeting of the Board of Directors of Eximbank at which a quorum is present or any meeting of the Executive Committee of the Board of Directors where deliberations of the Board of Directors or the Executive Committee determine or result in the joint conduct or disposition of official Eximbank business.

(c) The term "regularly scheduled meeting" means meetings of the Board of Directors or the Executive Committee which are held at 10 a.m. on Tuesday and Thursday of each week.

(d) The term "General Counsel" means the General Counsel and his or her designees.

§ 405.2 Closing meetings.

(a) Except where Eximbank finds that the public interest requires otherwise, a meeting, or any portion thereof, may be closed to the public, where the Board of Directors or the Executive Committee determines that such meetings, or any portion thereof, or information pertaining to such meeting, or any portion thereof, is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of Eximbank or any other agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) Deprive a person of a right to a fair trial or an impartial adjudication, (iii) Constitute an unwarranted invasion of personal privacy, (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) Disclose investigative techniques and procedures, or (vi) Endanger the life or physica safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would: (i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to: (A) Lead to significant financial speculation in currencies, securities, or commodities, or (B) Significantly endanger the stability of any financial institution; or

(ii) In the case of Eximbank or any other agency, be likely to significantly frustrate implementation of a proposed agency action; except that subparagraph (ii) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern Eximbank's issuance of a subpoena, or Eximbank's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Inasmuch as opening any regularly scheduled meeting, or any portion thereof, to public observation will be likely to result in the disclosure of the kind of information set forth in § 405.2(a) (4), (8), (9) (i) or (10), or any combination thereof, the Board of Directors hereby closes all regularly scheduled meetings to the public.

(c) Any other meeting of Eximbank, or any portion thereof, will be open to public observation except where the Board of Directors determines that such meeting, or any portion thereof, is likely to disclose information of the kind set forth in any subparagraph of § 405.2(a). In the event that the Board of Directors closes such meeting, or any portion thereof, by virtue of § 405.2(a) (4), (8), (9) (i) or (10), or any combination thereof, the procedures set forth in § 405.3 below will apply, and in the event that the Board of Directors closes such meeting, or any portion thereof, by virtue of any of the remaining subparagraphs of § 405.2(a), or any combination thereof, the procedures set forth in § 405.4 below will apply.

§ 405.3 Procedures applicable to regularly scheduled meetings.

(a) *Announcements.* Regularly scheduled meetings of the Board of Directors or the Executive Committee will be held at 10:00 a.m. every Tuesday and Thursday in the Board Room (Room 1141) of the Bank's headquarters. In the event that a regularly scheduled meeting is rescheduled, public announcement of the time, date and place for such meeting will be made at the earliest practicable time in the form of a notice posted in the Office of the Secretary. An agenda setting forth the subject matter of each regularly scheduled meeting will be made available in the Office of the Secretary (Room 1012, telephone number 202-382-2289) at the earliest practicable time, provided that individual items may be added to or deleted from any agenda at any time. Inquiries from the public regarding any regularly scheduled meeting shall be directed to the Office of the Secretary.

(b) *Voting.* At the beginning of each regularly scheduled meeting, the Board of Directors or the Executive Committee

will vote by recorded vote on whether to close such meeting. No proxy votes will be permitted. A record of such vote indicating the vote of each Director will be posted in the Office of the Secretary immediately following the conclusion of such meeting.

§ 405.4 Procedures applicable to other meetings.

(a) *Announcements.* (1) For every meeting which is to be open to public observation or which is to be closed pursuant to any subparagraph of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, public announcement will be made at least one week before the meeting of the time, place, and the agenda setting forth the subject matter of such meeting, and whether the meeting, or any portion thereof, is to be open or closed to the public.

(2) Inquiries from the public regarding any such meeting shall be directed to the Office of the Secretary.

(3) The one-week period for the announcement required by subparagraph (a)(1) of this section may be reduced if the Board of Directors or the Executive Committee determines by a recorded vote that Eximbank business requires such meeting to be called at an earlier date. Public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, will be made at the earliest practicable time.

(4) The time or place of a meeting may be changed following the announcement required by subparagraph (a)(1) of this section only if public announcement is made of such change at the earliest practicable time.

(5) The subject matter of a meeting or the determination of the Board of Directors or the Executive Committee to open or close a meeting, or any portion thereof, to the public, may be changed following the announcement required by paragraph (a) only if:

(i) A majority of the entire voting membership of the Board of Directors or the Executive Committee determines by a recorded vote that Eximbank business so requires and that no earlier announcement of the change was possible; and

(ii) The Board of Directors or the Executive Committee announces such change and the vote of each Director upon such change at the earliest practicable time.

(6) Individual items may be added to or deleted from any agenda at any time.

(7) The announcements required pursuant to this subsection shall be made in the form of a notice posted in the Office of the Secretary. In addition, immediately following each announcement required by this subsection, notice of: (i) The time, place and subject matter of a meeting which is to be open to public observation or which is to closed pursuant to any subsection of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, (ii) The decision to open or close such meeting, or any portion thereof, or (iii) Any change in any announcement previously made shall be submitted for publication in the FEDERAL REGISTER.

(8) The information required by this subsection shall be disclosed except to the extent that it is exempt from disclosure under any subsection of § 405.2 (a).

(b) *Voting.* (1) Action to close a meeting, or any portion thereof, pursuant to any subparagraph of § 405.2(a), other than subparagraphs (4), (8), (9)(i), or (10) or any combination thereof, shall be taken only when a majority of the entire voting membership of the Board of Directors or the Executive Committee votes to take such action.

(2) A separate vote of the Board of Directors or the Executive Committee shall be taken with respect to each meeting, or any portion thereof, which is proposed to be closed to the public pursuant to any subparagraph of § 405.2(a) other than subparagraphs (4), (8), (9) (i) or (10), or any combination thereof, or with respect to any information which is proposed to be withheld under any subparagraph of § 405.2(a), other than subparagraphs (4), (8), (9)(i) or (10), or any combination thereof.

(3) A single vote of the Board of Directors or the Executive Committee may be taken with respect to a series of meetings, or any portion thereof, which are proposed to be closed to the public pursuant to any subparagraphs of § 405.2(a), other than subparagraphs (4), (8), (9)(i) or (10), or combination thereof, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(4) Whenever any person whose interests may be directly affected by any portion of a meeting which is to be open to public observation submits a request in writing to the Office of the Secretary that the Board of Directors or the Executive Committee close such portion to the public under § 405.2(a) (5), (6) or (7), the Board of Directors or the Executive Committee, shall vote by recorded vote on whether to close such portion.

(5) No proxy vote will be permitted for any vote required under this subsection.

(6) A record of each vote indicating the vote of each Director pursuant to subparagraphs (b)(1), (b)(2), (b)(3) or (b)(4) of this section will be posted in the Office of the Secretary within one day after it has been taken, provided that if a meeting or portion thereof is to be closed, such record shall be accompanied by:

(i) A full writting explanation of the reasons for closing such meeting or portion thereof, and (ii) A list of all persons expected to attend such meeting or portion thereof and their affiliation.

§ 405.5 Certification by General Counsel.

For every meeting closed pursuant to any subparagraph of § 405.2(a), the General Counsel of Eximbank will be asked to certify that in his or her opinion such meeting may properly be closed to the public, and to state which of the exemptions set forth in § 405.2(a) he or she has relied upon. A copy of such certification will be posted in the Office of the Secretary. The original certification together with a statement from the presiding officer of such meeting setting forth the time, date and place of such meeting and the persons present will be retained by Eximbank as part of the transcript, recording or minutes of such meeting described below.

§ 405.6 Transcripts, recordings and minutes of closed meetings.

(a) Eximbank will maintain a complete transcript of electronic recording of the proceedings of every meeting or portion thereof closed to the public, provided, however, that if any meeting or portion thereof is closed pursuant to § 405.2(a) (8), (9)(i), or (10), Eximbank may maintain a set of detailed minutes for such meetings in lieu of a transcript or electronic recording. The entire transcript, electronic recording or set of minutes of a meeting will be made available to the public for inspection and copying in the Office of the Secretary at the earliest practicable time but in any event not later than 20 business days after such meeting has been held. Copies of such transcript or minutes, as well as copies of the transcription of such recording disclosing the identity of each speaker, will be furnished to any person at the actual cost of duplication or transcription. However, Eximbank will not make available for inspection or copying the transcript, electronic recording or minutes of the discussions of any item on the agenda of such meeting which contains information of the kind described in § 405.2(a) above. Requests to inspect or to have copies made of any transcript, electronic recording or set of minutes of any meeting or item(s) on the agenda thereof should be made in writing to the Secretary and if possible, identify the time, date and place of such meeting and briefly describe the item(s) being sought. Eximbank will maintain a complete verbatim copy of the transcript, a complete electronic recording or a complete copy of the minutes of each meeting, or portion thereof, closed to the public for two years after such meeting or one year from the date of final action of the Board of Directors or the Executive Committee on all items on the agenda of such meeting, whichever occurs later.

(b) The determination to withhold information pursuant to paragraph (a) above may be appealed in writing to the General Counsel, who will make a determination to withhold or release the requested information within 20 business days from the date of receipt of the request for review.

§ 405.7 Relationship to Freedom of Information Act.

All requests to inspect or have copied any transcript, electronic recording or minutes described above in § 405.3(c) will be governed by the procedures set forth

in this part. Nothing in this part shall effect the procedures set out in Part 404 governing requests for information, under the Freedom of Information Act.

[FR Doc.77-2819; Filed 1-27-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 371]

[SPDR-54, Docket 29940, Dated January 25, 1977]

ADVANCE BOOKING CHARTERS

Administrative Expenses

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment of Part 371 of its Special Regulations (14 CFR Part 371) that would authorize Advance Booking Charter (ABC) operators to charge a fee covering administrative expenses incurred when a substitute is arranged for a canceling participant.

The principal features of the proposed amendments are described in the Explanatory Statement, and the proposed amendment is set forth in the Proposed Rule. This amendment is proposed under the authority of sections 101, 204, 401, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, and 771; 49 U.S.C. 1301, 1324, 1371, 1372, and 1386.

Interested persons may participate in the rulemaking through the submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to Docket 29940, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before February 28, 1977, will be considered by the Board before taking final action on the proposed rules. Copies of such communications will be available for examination by interested parties in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., upon receipt thereof.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so through submission of comments in letter form to the Docket Section at the address indicated above, without the necessity of filing additional copies.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

Pursuant to § 371.14 of the Board's Special Regulations (14 CFR § 371.14), Advance Booking Charter (ABC) operators may arrange substitutes for a limited number of canceling ABC participants. Section 371.14(a) requires that each participant for whom a new participant is substituted receive a full refund of all monies paid to the charter operator with respect to the charter.

By petition dated October 18, 1976, Docket 29940, Charter Travel Corporation (CTC) requested that the Board adopt an amendment allowing an ABC operator to charge a canceling participant a fee of not more than $25, to cover administrative expenses, whenever the operator arranges a substitute for that participant. Petitioner also requested that this petition be considered simultaneously with its petition in Docket 29866, requesting that the Board amend Part 378a to allow One-stock-inclusive Tour Charter (OTC) operators to find substitutes for cancelling participants.

Answers supporting the petition were filed by ASTI Tours, Gogo International, Duncan Travel Service, Unitours, the Civil Aeronautics Board's Office of the Consumer Advocate (OCA), and jointly by Globus-Gateway Tours and Brendan Tours. No answers opposing the petition were filed.

In support of its request, CTC argued that since ABC operators are precluded from charging cancellation fees when substitutes are arranged, ABC prices must be raised to cover the expenses involved in making such arrangements, thus creating the anomaly that those who travel pay the expenses for those who cancel. Petitioner also pointed out that the Travel Group Charter (TGC) rule, which is the only other special charter rule authorizing air-only charters, permits TGC organizers to charge a fee of not more than 5 percent of the minimum pro rata charter price when substitutes are arranged for cancelling participants.

There is no limit on the cancellation fee an ABC operator may charge if no substitute is found. Gogo International, Unitours, Duncan Travel, and OCA pointed out that due to the expenses involved in arranging substitutions, it is to the advantage of ABC operators to avoid finding substitutes and to charge large cancellation fees. They argued that the current regulations thus provide a disincentive for operators to effect substitutions.

The Board tentatively finds that the described disincentive is indeed inappropriate with respect to non-European ABC's, where substitution privileges should be unfettered, but that it should be retained to discourage substitution in European ABC's. We therefore propose that, for non-European ABC's, an operator may reserve the right to retain up to $25 as an administrative fee to the canceling participant for arranging a substitute.

Duncan Travel, Gobus-Gateway and Brendan Tours, and Unitours all agreed that $25, the amount suggested by petitioner, would be a reasonable ceiling on cancellation fees when substitutes are found. However, Duncan Travel stated that $25 would not fully cover its costs for processing the cancellation and the new reservation. The Board specifically invites those parties filing comments to focus on whether $25 is a reasonable upper limit, and to submit data regarding the actual expenses involved in cancellations and substitutions.

The Board has tentatively decided not to state the upper limit as a percentage of the charter price (as is the case for TGC's) because it is not clear that the expenses incurred in arranging substitutions vary according to the price of the charter. However, the Board also invites comments on whether the ceiling should be expressed as a percentage of the air fare or by some other formula, rather than as a specific amount.

The Board has decided to deny CTC's request that this petition be considered simultaneously with its petition in Docket 29866 requesting that the Board amend Part 378a of the Special Regulations (14 CFR Part 378a) to allow tour operators to find substitutes for canceling OTC participants. That petition involves broader issues in a somewhat different area.

PROPOSED RULE

Accordingly, the Civil Aeronautics Board proposes to amend Part 371 of its Special Regulaions (14 CFR Part 371) as follows:

Paragraph (a) of § 371.14, Substitution for charter participants named on filed list, would be amended by adding at the end thereof the clause beginning with the words "except that," so that the paragraph as revised would read as follows:

§ 371.14 Substitution for charter participants named on filed list.

(a) The charter participant for whom a new participant is substituted shall receive a full refund of all monies paid to the charter operator with respect to the charter, except that, with respect to non-European charters, the charter operator may reserve the right to retain an administrative fee of not more than $25 for effecting the substitution.

* * * * *

[FR Doc.77-2824 Filed 1-27-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Regulations No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Income and Exclusions; Deeming of Income

Correction

In FR Doc. 77-1599, appearing at page 3316 in the issue for Tuesday, January 18, 1977, the following change should be made:

The next to last line of Example 2. in § 416.1185(b)(iv) should read, "income to $51.60. His quarterly benefits".

Food and Drug Administration

[21 CFR Parts 3e, 8, 121, 312, 314, 430, 431, 514]

[Docket No. 76N-0400]

NONCLINICAL LABORATORY STUDIES

Proposed Regulations for Good Laboratory Practice; Correction

In FR Doc. 76-34014 apearing at page 51206 in the FEDERAL REGISTER for Friday, November 19, 1976, the first sen-

tence in proposed § 3e.105(a) on page 51224 is corrected to read as follows:

§ 3e.105 Test and control substance characterization.

(a) The identity, strength, quality, and purity of each batch of a test or control substance shall be determined and documented by the testing facility before the initiation of the study, unless this determination with verifying documentation has been done by the sponsor.

* * * * *

Dated: January 19, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2405 Filed 1-27-77;8:45 am]

[21 CFR Part 740]

[Docket No. 76N-0486]

BUBBLE BATH PRODUCTS

Label Warning

The Food and Drug Administration (FDA) is proposing a required caution statement on labels of cosmetic bubble bath products. The statement cautions consumers against product misuse and recommends discontinuance of use and consultation with a physician should injury occur; comments by March 29, 1977.

The Food and Drug Administration has received many complaints from consumers and physicians about adverse reactions caused by bubble bath products. They reported itching and skin rashes; urinary tract, bladder and kidney injuries; and genital disorders. Other persons reported eye irritation and respiratory disorders. A significant number of injuries required medical attention. Copies of consumer injury complaint statistics (Refs. 1 and 2) and all other references cited in this preamble are on file at the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The medical literature contains many reports of urogenital disorders associated with the use of bubble bath products. For example, R. J. Simmons reported in 1955 on cases of vulvovaginitis, many of which he attributed to the use of detergent and perfumed soap products, including bubble bath preparations (Ref. 3). S. Marshall discussed in 1965 a case of urinary frequency, urgency, and marked terminal dysuria (painful or difficult urination) in a 2½-year-old male, which disappeared when bubble baths were discontinued (Ref. 4). In 1967, H. J. Roberts reported five cases of urethral and bladder irritation in diabetic females, precipitated or aggravated by habitual use of bubble bath preparations (Ref. 5). More cases of urinary tract disorders were reported in 1973. Stopping use of the bubble bath eliminated the symptoms (Ref. 6). In 1966, H. N. Bass described four cases of genitourinary tract injuries in children; the injuries were associated with bubble baths. These cases were representative of a total of 16 children with urethral and bladder irritation attributable to use of bubble bath preparations. The symptoms ceased or were alleviated when use of bubble baths were stopped. (Ref. 7.)

Although the ingredients causing the reported consumer injuries could not be determined with certainty by FDA, the available information indicated that the source of the adverse reactions appeared to be alkylarylsulfonate. Alkylarylsulfonates are general purpose detergent and wetting agents for use in industrial, household, and cosmetic products. Some alkylarylsulfonates have been widely used in all types of bubble bath products as detergent and foaming agents. The skin defattening and irritation properties of detergents are widely known (Refs. 4, 8, and 9).

To lower the probability of human hazard, the agency contacted in 1971 all cosmetic firms known to manufacture bubble bath products and requested that they reduce the alkylarylsulfonate content of their formulations to less than 10 percent, preferably to a concentration between 2 and 5 percent, and remove all other harsh ingredients. In addition, the firms contacted were asked to monitor carefully the frequency and types of adverse reactions because a safe concentration of alkylarylsulfonate had not been determined and additional reduction or elimination of the detergent ingredient might be necessary.

The annual number of consumer complaints related to bubble bath products did not change significantly during the ensuing years. In 1970, FDA received 25 consumer reports of adverse reactions to bubble bath products; in 1971 FDA received 14 consumer reports of adverse reactions. For the years 1972 through 1975, the annual complaints totaled 29, 60, 31, and 19, respectively (Refs. 1 and 2).

The number of consumer reports of adverse reactions for 1973, which was 60, was significantly higher than the number of adverse reactions for the other years because of a press and radio solicitation for consumer reports of adverse reactions; this solicitation was initiated by the Federal Trade Commission (FTC) in May 1973 in the Cleveland, Ohio, area. Statistical data confirm this observation: During the period of January 1, 1972 to July 18, 1973, FTC received 29 complaints at its Cleveland, Ohio, district office; for the same period, FDA received, at all its offices, 37 complaints. These data further indicate that many adverse reactions may be expected to remain unreported unless consumers are encouraged to report their experiences; even then, many consumer injuries may not be brought to the attention of FDA.

Other reports of consumer injuries associated with the use of bubble bath preparations were received by FDA through the program of voluntary filing of cosmetic product experiences by cosmetic firms, in accordance with 21 CFR Part 730 and a 3-month survey in 1974 of cosmetic adverse reactions among 10,000 households (Refs. 11 and 12). The voluntarily filed industry data for 1974 and the first half of 1975 included 34 reports of adverse reactions to bubble bath products. Only a limited number of firms have been participating in this program, and the largest distributors of bubble bath preparations did not file their consumer reports of adverse reactions.

The report of the 1974 survey of 10,000 households, "An Investigation of Consumers' Perceptions of Adverse Reactions to Cosmetic Products," which was published in June 1975, included 24 cases of adverse reactions from the use of bubble bath products. Most of the injuries involved itching, redness, rashes, chapping, and fissuring of the skin. Some consumers reported urogenital and respiratory disorders. During September, the panelists reported 15 adverse reactions and 10,705 product uses. Accordingly, the rate of adverse reactions was 14 per 10,000 product uses and was considerably higher than the cumulative rate of 6.9 for all cosmetic product categories.

The tabulations and analyses of the reports of consumer injury received by FDA show that many commercial bubble bath products have caused adverse reactions. The greatest number of complaints is related to the leading children's bubble bath product. The second highest number of complaints is associated with another widely distributed children's product. The majority of injuries and the most severe injuries, i.e., genitourinary tract disorders, were reported in childen,, particulaly female children (Refs. 1 and 2).

Repesentatives of FDA met in 1973 and 1974 on three occasions with representatives of the manufacturer of the leading children's bubble bath product to review the actions taken by the firm and resolve the adverse reaction problem (Refs. 13, 14, and 15). The manufacturer implemented several formulation changes and conducted several animal tests and one human study in an attempt to develop a bubble bath product that would have a lower rate of adverse reactions. In 1974 the firm notified FDA that the label of its bubble bath powder product would in the future bear explicit directions for use and statements cautioning against misuse so as to prevent possible irritation (Ref. 15). The effect of those actions on the adverse reaction level cannot be determined with certainty because comprehensive consumer injury data are unavailable. The available data FDA has received on consumer complaints about bubble bath products in this period indicates no significant reduction in consumer injuries. Since 1972, the annual ratio of adverse reactions to this manufacturer's bubble bath products in relation to the total number of injury reports received on bubble bath products in general, has remained essentially unchanged.

Because of the continuing high rate adverse reactions to bubble bath products and the potential for urogenital tract infection, the Commissioner believes that regulatory action is needed. The Commissioner finds that prolonged

or excessive use of bubble bath products contributes significantly to the high incidence of adverse reactions in users, particularly children. One indication that misuse is a contributing factor to the adverse reaction level is that reports of adverse reactions have not declined in recent years despite the changes in formulation and reduction in the alkylarylsulfonate concentration made by the leading manufacturers of bubble bath products.

The effects of soap and detergent solutions on the epidermis, particularly under conditions of repeated exposure, have been documented by B. Idson and M. E. Chernosky in reviews of pertinent scientific literature (Refs. 8 and 16). The skin-modifying effects of soap and detergents have been described also, for example, by J. D. Middleton, B. M. Allen, C. Prottey, and J. Ferguson (Refs. 9, 17, and 18). The removal of sebum from the surface of the skin and the extraction of lipids from the cell membranes of the outer layer of the skin by detergent solutions increase the skin's permeability and permit extraction of hygroscopic, water-soluble substances from epidermal cells. The decrease in hygroscopic substances reduces the water-binding capacity of the epidermis, and hence its flexibility and extensibility, and promotes dryness of the skin. Moreover, denuded, dry skin causes increased friction between one skin surface and another, or skin and clothing, particularly in winter when the relative humidity of the air indoors is low. These epidermal changes, external influences, and related factors may cause itching, redness, chapping, or fissuring of the skin, and in severe cases may induce inflammation and infection. Mucous membranes may undergo similar changes leading to irritation, inflammation, or infection. In severe cases of mucosal damage and microbial attack, urogenital tract infection may occur.

As pointed out by M. E. Chernosky, when skin appears dry and shows signs of damage, dermatologists instruct their patients to avoid soap and detergents as much as possible (Ref. 16). Accordingly, the Commissioner concludes that directions that inform consumers about the conditions of safe use of a bubble bath product, and a mandatory label statement cautioning the consumer about the possible adverse effects of these products and recommending consultation with a physician in cases of persistent irritation, may reduce significantly the occurrence of consumer injury. The effectiveness of cautionary labeling in reducing incidents cannot be determined from past experience because cautionary labeling has only recently come into use by the leading manufacturer and is not as prominent and direct as the labeling proposed below.

The Commissioner further concludes that the additional statement on powder bubble bath products cautioning against the inhalation of the dust of the detergent powder will abate the incidence of respiratory irritation and discomfort. Powder bubble bath products have a tendency to cause dusting when sprinkled into the water, particularly when added near the stream while it is turned on full force. Liquid bubble bath products are not expected to cause this adverse reaction because of their physical form and their ability to mix readily with the water.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Because of the many reported adverse reactions to bubble bath products, the Commissioner intends to make these requirements effective 6 months after publication of the final regulation in the FEDERAL REGISTER. The time period between publication of the final regulation and the effective date of the regulation should provide adequate time to make the required label changes. Accordingly, the labels of all products initially introduced into interstate commerce 6 months after publication of the final regulation must bear adequate directions for safe use and the required caution statements.

REFERENCES

1. Food and Drug Administration, Office of Planning and Evaluation, Consumer Safety Statistics Staff, OPE Study 17. Analysis of Bubble Bath Product Complaints 1967–1974, June 1975.

2. Consumer Reports of Injuries Related to Bubble Bath Products Received by the Food and Drug Administration during the Period September 1, 1974 to December 31, 1975.

3. Simmons, R. J., "Acute Vulvovaginitis caused by Soap Products," American Journal of Obstetrics and Gynecology, 6:447–8, 1955.

4. Marshall, S., "The Effect of Bubble Bath on the Urinary Tract," Journal of Urology, 93:112, 1965.

5. Roberts, H. J., "Bubble Bath Cystitis," Journal of the American Medical Association, 201:125–6, 1967.

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7. Bass, H. N., " 'Bubble Bath' as an Irritant to the Urinary Tract of Children," Clinical Pediatrics, 7:174, 1968.

8. Idson, B., "Water and the Skin," Journal of the Society of Cosmetic Chemists, 24:197–212, 1973.

9. Prottey, C. and T. Ferguson, "Factors which determine the skin irritation potential of soap and detergents," Journal of the Society of Cosmetic Chemists, 26:29–46, 1975.

10. "Tabulation of Consumer Adverse Reaction Complaints on Bubble Bath Products," memorandum by the Acting Director, Division of Cosmetics Technology to the Director, Bureau of Foods, Food and Drug Administration, July 20, 1973.

11. "Tabulations of Cosmetic Product Experience Reports Submitted to the Food and Drug Administration Under the Voluntary Cosmetics Regulatory Program, 1974 and January–June, 1975," prepared by Division of Cosmetics Technology, Food and Drug Administration.

12. Department of Health, Education, and Welfare, Food and Drug Administration, "FDA Study of Adverse Reactions to Cosmetic Products Among Nationwide Sample of 36,000 Cosmetics Users," tables 4.1, 5.7, 5.8, 5.9, and 5.19, and page 4–20 of full report entitled "An Investigation of Consumers' Perceptions of Adverse Reactions to Cosmetic Products," submitted by Westat, Inc., Rockville, MD 20852, June 1975.

13. Memorandum of Meeting of August 2, 1973 between Representatives of the Gold Seal Company and Food and Drug Administration representatives, dated August 20, 1973.

14. Memorandum of Meeting of September 25, 1973 between representatives of the Gold Seal Company and Food and Drug Administration representatives, dated September 27, 1973.

15. Memorandum of Meeting of February 28, 1974 between attorneys for Gold Seal Company and Food and Drug Administration representatives, dated March 4, 1974.

16. Chernosky, M. E., "Dry Skin and its Consequences," Journal of the American Medical Women's Association, 27:133–45, 1972.

17. Middleton, J. D., "The Mechanism of Action of Surfactants on the Water Binding Properties of Isolated Stratum Corneum," Journal of the Society of Cosmetic Chemists, 20:399–412, 1969.

18. Middleton, J. D. and B. M. Allen, "The Influence of Temperature and Humidity on Stratum Corneum and Its Relation to Skin Chapping," Journal of the Society of Cosmetic Chemists, 24:239–43, 1973.

19. Environmental impact analysis report.

20. Environmental assessment report.

21. Inflation impact assessment report.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 601, 602, 701(a), 52 Stat. 1041 as amended, 1054, as amended, 1055 (21 U.S.C. 321(n), 361, 362, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), it is proposed to amend Part 740 by adding the following new section to read as follows:

§ 740.17 Bubble bath products.

(a) For the purpose of this section, a bubble bath product is any product intended to be added to a bath for the purpose of cleansing the human body, or for other cosmetic purposes, that contains a detergent or foaming ingredient.

(b) The label of bubble bath products within the meaning of paragraph (a) of this section shall bear adequate directions for safe use and the following caution:

Caution—Use only as directed. Excessive use or prolonged exposure may cause irritation to skin and urinary tract. Discontinue use if rash, redness or itching occur. Consult your physician if irritation persists. Keep out of reach of children.

(c) In the case of products intended for use by children, the phrase "except under adult supervision" may be added at the end of the last sentence in the caution required by paragraph (a) of this section.

(d) In the case of powder products, the phrase "Avoid inhalation of dust to prevent respiratory discomfort" shall be added as the last sentence of the caution statement required by paragraph (a) of this section.

Interested persons may, on or before March 29, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably in quintuplicate and identified with

the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: January 18, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2404 Filed 1-27-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1309]

PAPAVER BRACTEATUM

Postponement and Rescheduling of Hearing: Extension of Time for Comments

On December 21, 1976, the Administrator of the Drug Enforcement Administration published a notice in the FEDERAL REGISTER (41 FR 55558) which scheduled hearings to be held on January 27 and 28, 1977, for the purpose of hearing comments on the notice of proposed production and control of Papaver Bracteatum in the United States, which had been published originally in the FEDERAL REGISTER on November 19, 1976 (41 FR 51036).

The hearings on this subject matter, scheduled to be held on January 27 and 28, 1977, have been postponed, and have been rescheduled to be held on March 15, 16, and 17, 1977, at a time and place to be announced in a future supplementary notice to be published within the FEDERAL REGISTER. The time for submission of written comments on this subject matter has been likewise extended to March 17, 1977.

Dated: January 25, 1977.

PETER B. BENNINGER,
Administrator.

[FR Doc.77-2965 Filed 1-27-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 888]

[Docket No. R-77-311]

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Schedule A; Fair Market Rents for New Construction and Substantial Rehabilitation

On April 6, 1976, at 41 FR 14662, the Department of Housing and Urban Development (HUD) amended Title 24 of the Code of Federal Regulations, incorporating in Part 888, Subpart A, a revised Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program)," for all market areas.

Since April 6, 1976, additional comments and data have been received from the Portland, Oregon Area Office indicating a need to establish a rent for a zero-bedroom semi-detached/row unit in the Portland market area.

The Department proposes to incorporate in Part 888, Subpart A, at 41 FR 14719, a revised Schedule A for the Portland market to add a fair market rent for zero-bedroom semi-detached/row housing.

Because it is necessary to the operation of the Section 8 program that fair market rents remain as current as possible, and because interested parties are encouraged at all times to submit information and data on those rents which will be considered in initiating revisions as needed, it has been determined that it is impracticable and unnecessary to provide a 30-day period for comments on these proposed revisions and that a 15-day period is reasonable and in the public interest.

Interested persons are invited to submit written data, comments, suggestions, or objections concerning the proposed revision. Communications should identify the subject matter by title and docket number and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material received on or before February 11, 1977, will be considered before adoption of the revision in final form. Copies of comments received will be available for examination during 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 procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., January 19, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM.)

These Fair Market Rents have been trended ahead two years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

NOTE: The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-Bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units and (3) single room occupancy dwelling units are those for 0-Bedroom units of the same type.

Area office, Portland, Oreg., region X—Seattle

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
Portland	Detached			234	322	335
	Semidetached/row	196	216	248	308	342
	Walkup	172	204	235	294	329
	Elevator	235	286	337		
	Detached					
	Semidetached/row					
	Walkup					
	Elevator					
	Detached					
	Semidetached/row					
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	Detached					
	Semidetached/row					
	Walkup					
	Elevator					

[FR Doc.77-2688 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

GROUP-TERM LIFE INSURANCE

Notice of Proposed Rulemaking

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 14, 1977. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by March 14, 1977. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 79(c) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

PREAMBLE

This document contains proposed amendments to the regulations under section 79 of the Internal Revenue Code of 1954, which provides that the cost of group-term life insurance purchased by an employer on the life of an employee is generally included in the employee's gross income but only to the extent the insurance exceeds $50,000. Insurance other than group-term life insurance (such as whole life insurance) does not qualify for this exemption. An employer can generally deduct the entire amount of premium he pays on behalf of his employees as part of the compensation paid for services rendered, regardless of the nature of the insurance purchased.

The present regulations, as applied by the Service, allow an insurance company to issue a policy (or a package of more than one policy) providing both pure life insurance protection and permanent benefits (such as a paid-up value, cash surrender value, or an equivalent benefit). In 1950, the Service held that the premiums paid by an employer for term life insurance in a combination policy containing both term life insurance and paidup life insurance are excluded from the employee's income. Mim. 6477, 1950-1 C.B. 16, paragraph 4. The regulations under section 79 issued in 1966 adopted this rule because it did not seem necessary to require life insurance companies to write two separate contracts merely to qualify the term insurance portion under section 79. The language of the 1966 regulations was interpreted to allow favorable section 79 treatment for the pure insurance portion of a whole life policy. This interpretation was specifically disavowed in Rev. Rul. 71-360, 1971-2 C.B. 87, and in revised section 79 regulations issued in 1972. Nevertheless, the misinterpretation has continued. In addition, the Service has concluded that there is no way to reconcile the varying methods used by insurance companies to allocate premiums between the (generally tax-free) pure life insurance protection and (taxable) permanent benefits. The allocations of the total premiums set firth in the policies have tended to weigh too heavily toward the pure life insurance protection, resulting in income being treated as tax-exempt that Congress did not intend to be so treated.

These amendments provide that a policy for purposes of section 79 must have no features other than pure group-term life insurance. These amendments contain new rules for determining whether a group-term life insurance policy sold in conjunction with certain other contracts constitutes group-term life insurance for purposes of section 79. A "safe-harbor" provision to enable taxpayers and others to determine easily whether the cost for such group-term life insurance qualifies for favorable section 79 treatment utilizes a new uniform premium rate table that supersedes Table I of 1.79-3(d)(2). The new Table II adopts the rates set forth in the Senate Finance Committee Report that preceded the enactment of section 79. Sen. Rept. No. 830, 88th Cong., 2d Sess., 1964-1 (Part II) C. B. 505, 551. It also applies to determine the cost of group-term life insurance in excess of $50,000 for taxable years of employees beginning after December 31, 1976. The new Table II is being proposed in this notice of proposed rule making because it better reflects the actual cost of group-term life insurance than Table I.

The new restrictions concerning combination sales apply to insurance provided under binding arrangements between employers and insurance companies entered into after November 4, 1976, the date IR-1689 was released by the Service. That news release announced a suspension of all private rulings with respect to combination policies entered into after that date. Insurance provided under binding arrangements entered into before November 5, 1976, will be subject to the old rules if no new employees are added after January 24, 1977.

AMENDMENT TO THE REGULATIONS

Accordingly, it is proposed to amend the Income Tax Regulations (26 CFR Part 1) as set forth below:

Paragraph 1. Section 1.79-1 is amended by deleting the second and third sentences of paragraph (b)(1)(i), by inserting three new sentences before paragraph (b)(1)(ii)(*a*), and by inserting a new paragraph (b)(1)(ii-a) after paragraph (b)(1)(ii). The amended provisions read as set forth below:

§ 1.79-1 General rules relating to group-term life insurance purchased for employees.

* * * * *

(b) *Meaning of terms.* * * *

(1) *Group-term life insurance*—* * *

(ii) *Paid up or similar value.* This paragraph (b)(1)(ii) applies only to insurance protection provided after December 31, 1963, for employees who had such protection before January 25, 1977. Pursuant to binding arrangements between an employer and an insurance company entered into before November 5, 1976 (or renewals thereof). Thus, if an employee who was not protected before January 25, 1977, is provided insurance protection thereafter, this paragraph (b)(1)(ii) does not apply to any insurance protection provided to any employees under the arrangement that protects the newly-covered employee. Similarly, if after November 4, 1976 the allocation of premiums between the cost of pure life insurance protection and other features is changed, or any new feature is sold in conjunction with a group-term life insurance policy, there is a new arrangement, and, consequently, this paragraph (b)(1)(ii) will no longer apply.

* * * * *

(ii-a) *Group-term life insurance provided after November 4, 1976*—(*a*) *General rule.* This paragraph (b)(1)(ii-a) applies to insurance protection provided after November 4, 1976, except that it does not apply to insurance protection to which paragraph (b)(1)(ii) of this section applies. To qualify as "group-term life insurance" for purposes of section 79,, a policy must have no features other than pure group-term life insurance. In addition, when an insurance company (or two or more insurance companies that are members of a controlled group of corporations described in section 1563 (a), applied by substituting "50 percent" for "80 percent" whenever the latter percentage appears) sells a group-term life insurance policy to an employer insuring the lives of its employees and in conjunction therewith sells to any person another policy on the life of an employee or an owner-employee (as defined below) that includes term or permanent

insurance, a paid-up value, a cash surrender value, or an equivalent benefit, then the group-term life insurance policy is not "group-term life insurance" for purposes of section 79 if the cost of the group-term life insurance policy includes any of the cost that is properly attributable to the other policy. For purposes of section 79, the cost of a provision permitting an employee to convert (or continue) the term insurance protection after it ceases to be provided by the employer shall be treated as part of the cost of the group-term life insurance with which it is associated, so long as it contains no other benefits (such as cash value) that are available to the employee. For the purpose of this paragraph (b)(1)(ii-a)(*a*), the term "owner-employee" means a person who—

(*1*) Owns the entire interest in an unincorporated trade or business,

(2) In the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership, or

(*3*) In the case of a corporation, is a shareholder who owns more than 10 percent of any class of stock in such corporation.

(*b*) *Safe-harbor guidelines.* The restriction contained in the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section ordinarily will be satisfied if the following conditions are met:

(*1*) The contracts for the group-term life insurance and such other benefits have each been filed with and approved by the applicable state insurance department as separate contracts.

(2) The availability, termination, conversion or amendment of one of the contracts has no effect in fact on the other contract (including its continuance).

(*3*) The premiums charged for the group-term life insurance policy do not exceed in the aggregate the premiums that would be charged if they were computed in accordance with Table II of § 1.79-3(d)(2).

(c) *Examples.* The following examples illustrate the application of the restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section.

Example (*1*). Corporation M purchases a group-term life insurance policy for its employees from insurance company U under which M will purchase decreasing term life insurance on each of its employees. It is contemplated that U will offer to each employee the opportunity to purchase units of paid-up life insurance such that the sum of the units of paid-up life insurance plus the term insurance with respect to each employee remains roughly constant over a period of years. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section applies to such an arrangement.

Example (2). Corporation P purchases a group-term life insurance policy from insurance company V. V gives to its agents a list of P's employees that it obtains by reason of the sale. Its agents call upon P's employees to sell permanent individual life insurance policies. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section does not apply to such an arrangement if such policies are generally available and sold under the same terms and conditions to persons not covered by a group-term life insurance policy issued by V.

Example (*3*). Corporation R purchases a group-term life insurance policy for its employees from insurance company W. A, president and owner of R, requests an individual life insurance policy from W at standard rates even though A is a substandard risk. A makes a full disclosure of such facts to W. W nevertheless issues such a policy. The restriction of the third sentence of paragraph (b)(1)(ii-a)(*a*) of this section applies to such an arrangement.

Par. 2. Section 1.79-3 is amended by

(1) Revising paragraph (d)(1),

(2) Amending that part of paragraph (d)(2) preceding Table I,

(3) Revising the heading of Table I in paragraph (d)(2),

(4) Adding a new Table II to paragraph (d)(2), and

(5) Revising the first sentence of paragraph (d)(3).

These new and added revisions are set forth below:

§ 1.79-3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) *The cost of the portion of group-term life insurance on an employee's life.* (1) This paragraph sets forth the rules for determining the cost, for each period of coverage, of the portion of the group-term life insurance on the employee's life to be taken into account in computing the amount includible in the employee's gross income for purposes of paragraph (a)(1) of this section. The portion of the group-term life insurance on the employee's life to be taken into account is determined in accordance with the provisions of paragraph (b) of this section. The appropriate table set forth in paragraph (d)(2) of this paragraph determines the cost for each $1,000 of such portion of the group-term life insurance on the employee's life for each one-month period. The cost of the portion of the group-term life insurance on the employee's life for each period of coverage of one month is obtained by multiplying the number of thousand dollars of such insurance computed to the nearest tenth that is provided during such period by the appropriate amount set forth in the appropriate table. In any case in which group-term life insurance is provided for a period of coverage of less than one month, the amount set forth in the appropriate table is prorated over such period of coverage.

(2) The following tables set forth the cost of $1,000 of group-term life insurance for 1 month computed on the basis of 5-year age brackets. For purposes of the tables, the age of the employee is his or her attained age on the last day of his or her taxable year. However, if an employee has attained an age greater than age 64, he or she shall be treated as if he or she were in the 5-year age bracket 60 to 64. With respect to the cost of group-term life insurance in excess of $50,000 to be included in the income of an employee, Table I applies to determine such cost for taxable years of the employee beginning before January 1, 1977. Table II applies to determine such cost for subsequent taxable years. Table II also applies for purposes of § 1.79-1 (b)(1)(ii-a) (relating to the cost of group-term life insurance under policies that are sold in conjunction with certain other contracts).

TABLE I—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION FOR EMPLOYEE'S TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1977

* * * * *

TABLE II—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE FOR EMPLOYEE'S TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1976

5-year age bracket	*Cost per $1,000 of protection for 1-month period*
15 to 19	$0.12
20 to 24	.14
25 to 29	.18
30 to 34	.23
35 to 39	.30
40 to 44	.43
45 to 49	.61
50 to 54	.91
55 to 59	1.36
60 to 64	2.06

(3) The net premium cost of group-term life insurance as provided in the tables of paragraph (d)(2) of this section applies only * * *

* * * * *

[FR Doc.77-2633 Filed 1-24-77;11:44 am]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 90]

CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Proposed Rulemaking; Correction

In FR Doc. 77-1289 appearing at page 2981 in the FEDERAL REGISTER of January 14, 1977, the comment period appearing on page 2981, is corrected in the 2nd column, 32nd line, to read "February 14, 1977," instead of "February 10, 1977."

Signed at Washington, D.C., this 21st day of January 1977.

JOEL SEGALL,
Deputy Under Secretary International Affairs.

[FR Doc.77-2827 Filed 1-27-77;8:45 am]

Occupational Safety and Health Administration

[29 CFR Part 1910]

HAZARDOUS MATERIALS LABELING

Advance Notice of Proposed Rulemaking

The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, is studying the recommendations of the Standards Advisory Committee on Hazardous Materials Labeling and requests public comment as to whether a standard requiring employers to label hazardous materials should be developed and what should be contained in such a standard to assure that employees are apprised of the hazards to which they are exposed.

Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (84 Stat. 1595, 29 U.S.C. 655) authorizes OSHA to issue standards which "prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." The Standards Advisory Committee on Hazardous Materials Labeling was established under section 7(b) of the Act (29 U.S.C. 656) to develop guidelines for the implementation of section 6(b)(7) of the Act with respect to hazardous materials. The Committee was requested:

to develop guidelines for categorizing and ranking hazards of materials, and guidelines for prescribing the required warnings of such hazards and related information on symptomatology, protective steps and equipment, and safe handling procedures, by such means as labels, data sheets and training requirements,

and to report to the Assistant Secretary of Labor for Occupational Safety and Health within 270 days following establishment of the Committee. The work of the Committee was to be basically limited to chemicals.

The Advisory Committee began its deliberations on September 19, 1974, and concluded its activities in June 1975. All scheduled meetings were open to the public, and were announced in advance in the FEDERAL REGISTER. The final report of the Committee, endorsed by a majority of the Committee members, was transmitted to the Assistant Secretary on June 6, 1975. There were also three minority reports on various sections of the final report.

Prior to developing specific recommendations, the Committee identified and discussed several major issues. For example, the Committee considered questions relating to classification systems for hazardous chemicals addressing itself to what major classification systems exist, their strengths and weaknesses, as well a their basis of design, and their ability to meet the objectives and scope of such classification systems. Further, questions arose concerning the maintenance, updating, and revision of classification systems, and concerning how a standard should accommodate changing technological developments affecting the classification system? Requirements and practices in these areas have been well established in many industries and by professional associations, as well a regulated by various government agencies and international agreements. The Committee tried to take cognizance of the existing practices in arriving at its final conclusions. Among other materials, the Committee also considered the document, "An Identification System for Occupationally Hazardous Materials," which was prepared by the National Institute for Occupational Safety and Health (NIOSH). A draft of the NIOSH document was given to the Committee members at their first meeting, and they received the final document midway through their deliberations.

The basic premise of the Committee in developing guidelines for categorizing and ranking hazards of materials and for prescribing the required warnings by labels, data sheets and training programs, involved a total system concept. This concept utilizes an integrated program including material safety and health hazard information in the formulation and implementation of an employee training program. Some or all of the parts of the system are required, as warranted by the potential hazard conditions. Under the Committee's recommendations, the determination of the specific hazard classification/ranking of a material, and the implementation of such items as material safety data sheets, hazard placard systems, and labeling systems in employee training and indoctrination programs, would be the specific responsibility of the employer.

In developing guidelines for the hazard classification and ranking of a material, the Committee confined its recommendations to three major categories of hazards: flammability, reactivity, and health. The Committee suggested that the Secretary cousult with other Federal agencies concerned with material hazards, such as the Environmental Protection Agency, the Consumer Products Safety Commission, and the Department of Transportation, to solicit information that would be of assistance to OSHA in the preparation of a proposal for hazardous materials labeling.

The Committee recommendations with regard to label requirements are extensive, as a label affords the most immediate means of informing an employee of the hazards of a particular material.

They are based on the language labeling system developed by a committee of the Manufacturing Chemists Association, certain United Nations symbols, and certain provisions of the regulations of the Federal Hazardous Substances Act.

The Committee recommended that each employer prepare a material safety data sheet to be used in combination with other components of the system such as labels, placards, and employee indoctrination programs to provide employers and employees with relevant information on potentially hazardous materials and situations.

An indoctrination program and continuing employee training concerning potential hazards is recommended by the Committee. The indoctrination program and training include: hazard identification and recognition, relevant symptoms of disease, emergency procedures, and the necessity for accurate recordkeeping.

In addition to considering the above recommendations, OSHA has received other information related to hazardous materials labeling. The Health Research Group submitted a petition on September 27, 1976, requesting that OSHA promulgate a regulation which would require "each employer to post and provide to each employee representative a list of the generic names of all chemicals used and produced at the workplace." In addition, members of Congress have expressed interest in this subject and have suggested that OSHA initiate steps to issue a regulation requiring disclosure to employees of the generic name of chemicals to which they are exposed.

In September 1976, the Committee on Government Operations of the House of Representatives issued a report (House Report No. 94-1688) dealing with chemical dangers in the workplace. As one of its several findings and conclusions, the Committee stated that "the Occupational Safety and Health Administration has failed to implement section 6(b)(7) of the Occupational Safety and Health Act which requires that employees be apprised of and be protected from the hazards to which they are exposed." The Report then commented that OSHA's promulgation of the Threshold Limit Value list (29 CFR 1910.1000) as a standard was an initial step that should be supplemented by "regulations requiring labeling, monitoring, and training." In order to comply with the intent of the recommendations contained in the Committee Report, OSHA is publishing this notice as a preliminary step in the development of a regulation.

Accordingly, interested persons are invited to submit written data, views, and arguments concerning a standard on hazardous materials labeling. Comments are specifically requested concerning:

1. Whether a standard on hazardous materials labeling should be issued or be included in the Standards Completion Project or be covered by another mechanism;

2. The source for the list or group of chemicals to be included in this standard (the chemicals contained in 29 CFR 1910.1000, the NIOSH Toxic Substances List, or other source);

3. Each section of the advisory committee recommendations;

4. Suitable alternatives to the recommendations of the advisory committee;

5. The national Institute for Occupational Safety and Health document, "An Identification System for Occupationally Hazardous Materials;"

6. The obligation of an employer to determine the hazards related to the materials to which his employees are exposed;

7. Criteria for establishing categories of hazards;

8. Whether the contents of the labels should be in the nature of a warning or contain descriptive information concerning the hazards of each material;

9. Appropriate training requirements and other means of informing the employee;

10. The listing of generic names for trade name substances covered by the regulation;

11. Supported cost data of the estimated costs of coming into compliance with the recommendations of the advisory committee;

12. The relationship of an OSHA standard on hazardous materials labeling with the authority and regulations of DOT, CPSC, and EPA; and

13. Any other related issues.

Communications must be submitted by March 29, 1977 to the Docket Officer, OSHA, New Department of Labor Bldg., 200 Constitution Avenue, NW., Washington, D.C. 20210. The submissions will be available for public inspection and copying at the above location.

The recommendations of the Standards Advisory Committee on Hazardous Materials Labeling will be available for inspection and copying, upon request, at any of the following addresses:

NATIONAL OFFICE

Department of Labor-OSHA, Room N3620, 200 Constitution Ave., N.W., Washington, D.C. 20210.

REGIONAL OFFICES

REGION I

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building, Room 1804—Government Center, Boston, Massachuetts 02203.

REGION II

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036.

REGION III

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104.

REGION IV

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, N.E.—Suite 587, Atlanta, Georgia 30309.

REGION V

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor—Room 3263, Chicago, Illinois 60604.

REGION VI

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Dallas, Texas 75202.

REGION VII

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 3000, Kansas City, Missouri 64106.

REGION VIII

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 15010, 1961 Stout Street, Denver, Colorado 80294.

REGION IX

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue—Box 36017, San Francisco, California 94102.

REGION X

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6048, 909 First Avenue, Seattle, Washington 98174.

This advance notice of proposed rulemaking is issued under sections 6 and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657) and Secretary of Labor's Order No. 8-76 (41 FR 25059).

Signed at Washington, D.C., this 19th day of January, 1977.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc. 77-2377 Filed 1-25-77;4:17 pm]

[29 CFR Part 1910]

[Docket No. OSH-11A]

OCCUPATIONAL NOISE EXPOSURE

Availability of Post-Hearing Comments and Additional Information on Economic Impact Analysis; Limited Comment Period

Pursuant to notices published in the FEDERAL REGISTER on June 18, 1976 (41 FR 24718) and August 6, 1976 (41 FR 32912), an informal hearing was convened on September 21, 1976 concerning the economic impact analysis (EIA) of the proposed standard on occupational noise exposure, and related issues as set forth in the notices. The hearing extended through October 8, 1976, at which time Administrative Law Judge Jean Greene who had presided at the hearing, announced that the record would remain open for receipt of post-hearing comments for a period of 60 days.

During the hearing, OSHA received many requests for information which was not contained in the economic impact analysis itself, but which was related to its preparation. OSHA's representative at the hearing noted that all requests for additional material would be taken under advisement by the agency, and that a decision would be forthcoming with regard to such material.

As was discussed at the hearing, it would require substantial additional funding and effort to provide the requested information for the record. Much of the requested information could not be made public by the contractor because it was obtained pursuant to pledges of confidentiality. Moreover OSHA cannot make such information available because OSHA does not have it in its possession or control. With regard to requested data the release of which would not breach any pledges of confidentiality, OSHA has decided to take steps to supply such data for the record, and has contracted with Bolt Beranek and Newman, Inc., (BBN), the contractor for the EIA, to make it available.

In addition, BBN has prepared a post-hearing comment, which discusses certain issues that arose at the hearing, particularly those areas of the EIA which have engendered the most comment. This post-hearing comment is now available for inspection and copying at the following address:

Technical Data Center (Docket No. OSH-11A), Room N-3620, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW, Washington, D.C. 20210.

The BBN post-hearing comment includes data requested at the hearing which can be furnished without compromising BBN's pledges of confidentiality

OSHA recognizes that participants at the hearing may wish to comment on the additional information contained in BBN's post-hearing comment. Therefore, OSHA hereby reopens the comment period for the limited purpose of permitting participants at the hearing to comment upon the BBN post-hearing comment, for a period of 30 days. Comments must be submitted in quadruplicate to the above address, and must be postmarked on or before February 28, 1977.

At the end of this period the presiding Administrative Law Judge will certify the record of the proceeding to the Assistant Secretary of Labor for Occupational Safety and Health. The proposal will be reviewed in light of all oral and written submissions received as part of the record and final action will be taken based on the entire record developed in this proceeding.

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8-76.)

Signed at Washington, D.C., this 19th day of January 1977.

BERT M. CONCKLIN,
Deputy Assistant Secretary of Labor

[FR Doc.77-2376 Filed 1-19-77;5:06 pm]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 66]

RECOVERY OF SCIENTIFIC, PREHISTORIC, HISTORIC, AND ARCHEOLOGICAL DATA: METHODS, STANDARDS, AND REPORTING REQUIREMENTS

Proposed Guidelines

On August 13, 1975, the Department of the Interior distributed a "Statement of Program Approach" with respect to its responsibilities under Pub. L. 93-291, the Archeological and Historic Preservation Act of May 24, 1974 (88 Stat. 174, 16 U.S.C. Section 469a-1 et seq.; hereinafter, "the Act"). Comments have been received from many Federal agencies, State Historic Preservation Officers, and members of the public. The Department expects to publish proposed rulemaking with respect to this aspect of the Act, for comment, in the near future.

Many of the comments received indicate a need for the Department to provide substantive guidance to agencies that undertake to recover scientific, prehistoric, historic, and archeological data; such guidance is also contemplated by the Act. It is the purpose of this notice of proposed rulemaking to provide this information as a part of the Department's proposed overall rulemaking with respect to the Act. This guidance will facilitate the Department's coordination of activities authorized under the Act, and its reporting to Congress on the scope and effectiveness of the program, as required by section 5(c) of the Act. It will also help guarantee the uniform high quality of reports submitted to the

Department pursuant to the requirements of section 3(a) of the Act.

The Act provides Federal agencies with a method of mitigating impacts of their undertakings upon those historic properties that contain scientific, prehistoric, historic, or archeological data. This method, data recovery, is not the only method that may be properly applied in order to mitigate project impacts identified through the process prescribed by the National Environmental Policy Act of 1969 (Pub. L. 91–190, hereinafter, "NEPA"). Actions that preserve historic properties in place are usually preferable to the preservation of data alone through data recovery activities, both because such actions usually extend the useful lives of the properties and their data and because they often are less costly. The activities authorized by the Act must also be understood as applicable only to the mitigation of project impacts on the data or research value of historic properties, not on those historic or cultural attributes that are not data related. For example, the Act does not pertain to actions that may be appropriate under NEPA or the National Historic Preservation Act of 1966 (Pub. L. 89–665; hereinafter, "NHPA") to preserve the historical or cultural meaning or integrity of a property to a neighborhood, community, or group.

In order to ascertain when application of the Act to impact mitigation activities may be appropriate, and to apply its provisions wisely, it is necessary that the planning steps required by NEPA, NHPA, and Executive Order 11593 be taken before the Act is invoked; the Act is not a substitute for these planning authorities. It is also obvious that before data can be recovered under the terms of the Act, the districts, sites, buildings, structures, and objects that contain or represent such data must be carefully located and identified. Accordingly, Appendix B is provided setting forth the Department's general guidelines for the location and identification of historic properties.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding these proposed guidelines to the Chief, Office of Archeology and Historic Preservation, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 on or before March 14, 1977.

Under the terms of the Act, these guidelines are a Department of the Interior responsibility. The budget implications of the Act for other Federal agencies have been presented to the Office of Management and Budget for coordination therewith. It is hereby certified that the economic and inflationary impacts of these proposed guidelines have been carefully evaluated in accordance with Executive Order 11821. The impact will be minor and preparation of an inflation impact statement is not required.

This rulemaking is developed under the authority, *inter alia*, of section 5(c) of the Archeological and Historic Preservation Act of 1974, 16 U.S.C. § 469a–3 *et seq* (1970 ed.). In consideration of the foregoing, it is proposed to amend Chapter 1 of Title 36, Code of Federal Regulations, to add a new Part 66 as follows:

PART 66—RECOVERY OF SCIENTIFIC, PREHISTORIC, HISTORIC AND ARCHEOLOGICAL DATA: METHODS, STANDARDS, AND REPORTING REQUIREMENTS

Sec.

66.1 Definitions.
66.2 Data recovery operations.
66.3 Protection of data and materials.
66.4 Provision of reports to the Department.
Appendix A: Format standards for final reports of data recovery.
Appendix B: Guidelines for the location and identification of historic properties containing scientific, prehistoric, historical, or archeological data.
Appendix C: Professional qualifications.
Appendix D: Recommendations for the procurement of location, identification, and data recovery programs.

AUTHORITY: Sections 2(a), 2(c), 2(j), and 2(k) (without regard to the last sentence thereof), 49 Stat. 666 (16 U.S.C. 462(a), (c), (j), (k)); Section 5(c), 88 Stat. 174 (16 U.S.C. 469a–3).

§ 66.1 Definitions.

(1) *Area subject to environmental impact* is that land area, or areas, where land may be disturbed, or buildings or structures altered, or the environment of historic properties changed, in such a way as to affect their historical value.

(2) *Historic properties* are sites, districts, structures, buildings, and objects that may meet the National Register criteria set forth at 36 CFR 60.6, by virtue of their possession of one or more kinds of historical value. One kind of historical value is data or research value, the known or potential capacity of a property to provide information important to the reconstruction, analysis, and understanding of history.

(3) *History* comprises the events, patterns, and processes of the human past, including those that have affected literate societies and those that have affected pre-literate or nonliterate groups, whose history is sometimes referred to as prehistory.

(4) *Significant data*, as used by the Act, are data that can be used to answer research questions, including questions of present importance to scholars and questions that may be posted in the future.

(5) *Archeological data* are data embodied in material remains (artifacts, structures, refuse, etc.) produced purposely or accidentally by human beings, and in the spatial relationships among such remains.

(6) *Historical data* are data useful in the study and understanding of human life during the period since the advent of written records in the area of concern. The date of inception of the historic period varies from area to area within the United States.

(7) *Prehistoric data* are data useful to the study and understanding of human life during the prehistoric period, i.e., at all time periods prior to substantial contact between the native people of the United States and literate societies. The end point of the prehistoric period varies from area to area within the United States.

(8) *Scientific data*, as used by the Act, are data provided by sciences other than archeology, history, and architecture, that are relevant to an understanding of human life during either historic or prehistoric periods. Ethnographic, biological, geological, paleontological, ecological, and geophysical data, among others, are often important to the understanding of the human past.

(9) *Location and identification study* is the study necessary to determine the locations of, and to evaluate, historic properties. At a minimum it requires background research; if existing data are inadequate to permit the location and evaluation of historic properties, it requires field inspection as well (See Appendix B).

(10) *Data recovery* is the systematic removal of the scientific, prehistoric, historic, and/or archeological data that provide an historic property with its research or data value. Data recovery may include preliminary survey of the historic property or properties to be affected for purposes of research planning, the development of specific plans for research activities, excavation, relocation, preparation of notes and records, and other forms of physical removal of data and the material that contains data protection of such data and material, analysis of such data and material, preparation of reports on such data and material, and dissemination of reports and other products of the research. Examples of data recovery include archeological research producing monographs, descriptive, and theoretical articles, study collections of artifacts and other materials; architectural or engineering studies resulting in measured drawings, photogrammetry, or photography; historic or anthropological studies of recent or living human populations relevant to the understanding of historic properties, and relocation of properties whose data value can best be preserved by so doing.

(11) *Material* means actual objects removed from an historic property as a part of a data recovery program, including but not limited to artifacts, byproducts of human activity such as flakes of stone, fragments of bone, and organic waste of various kinds, architectural elements, soil samples, pollen samples, skeletal material, and works of art.

(12) *Principal Investigator* means the contractor or other person directly responsible for a location and identification, or data recovery project.

(13) *Research design* is a plan, usually generated by the principal investigator, outlining the proposed approach to a location, identification, or data recovery project. Minimally, the design should spell out relevant research problems, research methods, and some predicted results of the study. Research designs are

often modified as the course of research yields new findings.

(14) *Research methods* are procedures and techniques used to record, recover, and/or analyze a body of data such that conclusions may be drawn concerning research problems.

(15) *Research problems* are questions in anthropology, sociology, geography, history, architectural history, art history, and other disciplines of the sciences and humanities that can potentially be answered by studying historic properties. Scientific, prehistoric, historic and archeological data are valuable insofar as they are potentially applicable to the investigation of research problems. Research problems are typically posed as questions about human behavior, thought, or history. Potential answers to such questions, and the ways in which such possible answers may be reflected in the data content of specific historic properties are often spelled out in research designs as hypotheses and test implications.

§ 66.2 Data recovery operations.

(a) Data recovery program operations carried out under the authority of the Act should meet at least the following minimum standards:

(1) All operations should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. Qualifications commonly required for professionals are set forth in Appendix C;

(2) The program should be conducted in accordance with a professionally adequate research design. This design should reflect:

(i) An understanding by the principal investigator of the data or research value of the property. This value will normally have been defined as a result of a location and identification study as discussed in Appendix B.

(ii) An acquaintance on the part of the principal investigator with previous relevant research, including research in the vicinity of the proposed undertaking and research on topics germane to the data recovery program regardless of where such research has been carried out.

(iii) The development of a definite set of research problems, taking into account the defined research value of the property, other relevant research and general theory in the social and natural sciences and the humanities that may be pertinent to the data to be recovered.

(iv) A responsiveness to the need to recover from the property to be investigated, a usable sample of data on all research problems that reflect the property's research value, or a clear and defensible rationale for collecting data on a smaller range of problems at the expense of others.

(v) Competence on the part of the principal investigator and his or her staff in the methods and techniques necessary to recover the data contained in the property, and an intention to utilize these methods and techniques in the research;

(3) The program should provide for adequate personnel, facilities, and equipment to fully implement the research design;

(4) The program should provide for adequate consultation with scholars whose research interests would enable them to contribute to the research;

(5) The program should employ methods that insure full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques, stratigraphic and/or associational relationships where appropriate, significant environmental relationships, etc. Where architectural characteristics are recorded, such recording should be consistent with the standards published by the Historic American Building Survey (HABS) in "Recording Historic Buildings," by H. J. McKee (National Park Service, 1970). Updated guidelines for recording architectural, engineering, and archeological data may be obtained from the Director, Office of Archeology and Historic Preservation, National Park Service;

(6) If portions or elements of the property under investigation can be preserved, the program should employ methods that make economical use of these portions or elements. Destructive methods should not be applied to such portions or elements if nondestructive methods are feasible;

(7) The program should result in a report or reports detailing the reasons for the program, the research design, the methods employed in both fieldwork and analysis, the data recovered, and the knowledge or insights gained as a result of the data recovery, with reference to the research design and the research value of the property. The report or reports should meet contemporary professional standards, and should be prepared in accordance with the format guidelines set forth in Appendix A;

(8) The program should provide for adequate perpetuation of the data recovered, as discussed at § 66.3. Care should be taken during curation and handling of specimens and records to insure that data are not lost or decimated. Provision must be made for disseminating the report of the program. Appropriate methods for dissemination of results include but are not limited to publication in scholarly journals, monographs, and books, presentation on microfilm or microfiche through the National Technical Information Service or other outlets, and distribution in manuscript form to State Historic Preservation Officers and other appropriate archives and research libraries. Reports submitted to the Department of the Interior pursuant to section 3(a) of the Act will be disseminated as set forth in § 66.4, but nonredundant independent distribution is encouraged. At a minimum, a copy of each report should be provided to the State Historic Preservation Officer; and

(a) Particularly when a data recovery program is conducted upon a potentially complex historic property (e.g., a recent town site; a prehistoric site that may contain many occupation layers, cemeteries, or architectural remains), situations may arise or data be encountered that were not anticipated in designing the program. Adequate provision should be made for modification of the program plan to cope with unforeseen discoveries or other unexpected circumstances.

(b) These guidelines should be regarded as flexible, inasmuch as (a) some specialized types of data recovery (e.g., the relocation of a structure or object) may not require all the operations discussed above, and (b) innovative approaches to data recovery should be encouraged, as long as these have as their purpose the basic purpose set forth in section 1 of the Act.

§ 66.3 Protection of data and materials.

(a) Data recovery programs result in the acquisition of notes, photographs, drawings, plans, computer output, and other data. They also often result in the acquisition of architectural elements, artifacts, soil, bone, modified stones, pollen, charcoal, and other physical materials subject to analysis, interpretation, and in some instances display. Analytic techniques that can be applied to such data and material change and improve through time, and interpretive questions that may be asked using such data and material also change and develop. For these reasons, and to maintain data and material for public enjoyment through museum display, it is important that the data and material resulting from data recovery programs be maintained and cared for in the public trust.

(1) Data and materials recovered from lands under the jurisdiction or control of a Federal agency are the property of the United States Government. They shall be maintained by the Government or on behalf of the Government by qualified institutions through mutual agreement. A qualified institution is one equipped with proper space, facilities, and personnel for the curation, storage, and maintenance of the recovered data and materials. The exact nature of the requisite space, facilities, and personnel will vary depending on the kinds of data and materials recovered, but in general it is necessary for a qualified institution to maintain a loboratory where specimens can be cleaned, labeled, and preserved or restored if necessary; a secure and fireproof storage facility organized to insure orderly maintenance of materials; a secure and fireproof archive for the storage of photographs, notes, etc., and a staff capable of caring for the recovered data and material.

(2) Data recovered from lands not under the control or jurisdiction of a Federal agency, as a condition of a Federal license, permit, or other entitlement, are recovered on behalf of the people of the United States and thus are the property of the United States Government. They should be maintained as provided under § 66.3(1)(a) above. The nonfederal provider of funds should be provided with copies of such data upon request. Material recovered under such

circumstances should be maintained in the manner prescribed under § 66.3(1)(a) insofar as is possible.

(b) Data and material resulting from a data recovery program should be maintained by a qualified institution or institutions as close as possible to their place of origin, and made available for future research.

(c) Data on architectural and/or engineering characteristics, recorded in accordance with the standards discussed at § 66.2.1(e) above, should be filed with the Library of Congress.

§ 66.4 Provision of reports to the Department.

(a) Pursuant to the terms of section 3(a) of the Act, any Federal agency that undertakes a program of data recovery as authorized by the Act shall provide the Department of the Interior with copies of the resulting reports. The Department shall make these reports available to the public.

(b) In order to facilitate public access to these reports, the Department, represented by the Office of Archeology and Historic Preservation, National Park Service, has entered into an agreement with the National Technical Information Service, which agreement provides for the storage on microfiche, and reproduction upon demand, of all final reports on data recovery programs either undertaken by the Department or provided to the Department under the authority of the Act.

(c) Two (2) copies of each final report shall be filed with the Director, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C. 20240. All final reports shall be prepared in accordance with the format standards set forth in Appendix A.

(d) In order to facilitate the Department's fulfillment of its responsibilities under section 5(c) of the Act, to report to Congress concerning the scope and effectiveness of the National Survey and Data Recovery effort, each agency engaging in such activities shall also file with the Director, Office of Archeology and Historic Preservation:

(1) Two (2) copies of each final report on any location and identification study, regardless of whether the study resulted in the actual identification of historic properties;

(2) One (1) copy of each scope-of-work or other description of a proposed location and identification or data recovery program;

(3) One (1) copy of each contract let for any location and identification or data recovery program;

(4) Together with each final report of a location and identification or data recovery program, a statement of the costs incurred by the Federal Government in the conduct of the program; and

(5) Together with each final report of a location and identification or data recovery program, the comments of at least one (1) professional in the field of study represented by the report, and of the State Historic Preservation Officer(s) in whose State(s) the program took place, on the scope and effectiveness of the program reported.

APPENDIX A—FORMAT STANDARDS FOR FINAL REPORTS OF DATA RECOVERY PROGRAMS

The following format standards are required for reports provided to the Department of the Interior under terms of section 3(a) of the Act. They are recommended for other reports provided to the Department pursuant to § 66.4.4(a) as well.

1. Text and line drawings should be clean, clear, and easily reproducible.

2. Photographs should be original black and white positive prints, or high-quality reproductions.

3. Typescript should be single spaced.

4. All pages should be numbered in sequence.

5. Form NTIS-35, available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia, 22161 should be enclosed with each report, partially completed in accordance with the example shown in Figure 1 below.

Figure 1

BIBLIOGRAPHIC DATA SHEET	1. Report No.	2.	3. Recipient's Accession No.
4. Title and Subtitle COMMUNITY ORGANIZATION AT THE ROCKPILE SITE			5. Report Date Jun 79 6.
7. Author(s) John Doe and Sally H. Slade			8. Performing Organization Rept. No. ME-22
9. Performing Organization Name and Address Western Oklahoma State University Western, Oklahoma			10. Project/Task/Work Unit No. 11. Contract/Grant No. CX 1595-9-0073
12. Sponsoring Organization Name and Address U.S.D.A. Soil Conservation Service, Rockpile Soil Conservation District			13. Type of Report & Period Covered 1/77-6/79 14.

15. Supplementary Notes

16. Abstracts

A data recovery project at the Rockpile Site in northwestern Texas (41 XA 1011) was directed to the development of an understanding of settlement organization during the Late Archaic period. The single-component site represented a permanent village occupied by hunters and gatherers. Analysis of faunal and floral remains indicates intensive exploitation of the local environment. Complete excavation of the site revealed evidence of both circular and rectangular houses arranged in rows. Non-random distribution of Alibates flint detritus suggests the possibility of occupational specialization among households. Non-random distribution of non-utilitarian artifacts suggests the recognition of different social statuses.

17. Key Words and Document Analysis. 17a. Descriptors

17b. Identifiers/Open-Ended Terms

Community organization
Social organization
Occupational specialization
Subsistence practices
Northwest Texas
Archaic

17c. COSATI Field/Group

18. Availability Statement	19. Security Class (This Report) UNCLASSIFIED	21. No. of Pages 523
	20. Security Class (This Page UNCLASSIFIED	22. Price

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APPENDIX B—GUIDELINES FOR THE LOCATION AND IDENTIFICATION OF HISTORIC PROPERTIES CONTAINING SCIENTIFIC, PREHISTORIC, HISTORICAL, OR ARCHEOLOGICAL DATA

In order to notify the Secretary of the potential loss or destruction of significant scientific, prehistoric, historical, or archeological data pursuant to sections 2, 3 and 4 of the Act, in a manner that will permit the Secretary to act effectively in response to this notification, it is necessary that the agency provide appropriate documentation concerning the nature and significance of all historic properties, subject to impact, that may contain such data. It is recommended that such documentation be generated by agencies in the course of their planning activities carried out under the authorities of the National Environmental Policy Act of 1969 (Pub. L. 91–190) (NEPA), the National Historic Preservation Act of 1966 (Pub. L. 89–665 as amended) (NHPA), Executive Order 11593, and related authorities.

It is important that agencies understand the relationship among NEPA, such general historic preservation authorities as the NHPA, and the Archeological and Historic Preservation Act. NEPA mandates the evaluation of project impacts on the entire environment, including all kinds of cultural resources. One kind of cultural resource is the historic property which is the concern of the NHPA and Executive Order 11593. Section 106 of the NHPA sets forth specific actions to be taken when this kind of cultural resource is subject to effect. Some historic properties contain scientific, prehistoric, historical, and archeological data; the Archeological and Historic Preservation Act of 1974 provides mechanisms for the recovery of such data if and when the planning processes provided for by NEPA, NHPA, and related authorities have resulted in the conclusion that data recovery constitutes the most prudent and feasible method of impact-mitigation.

Identification of cultural resources is an obvious prerequisite to the evaluation of impact on such resources, and to the planning of methods for the mitigation of such impacts. Identification of cultural resources in general through the NEPA process involves a broad, general, interdisciplinary study of all those social and cultural aspects of the environment, both tangible and intangible, that may be affected by the undertaking. Identification of historic properties requires the location of those tangible places and things that may contain or represent historic values, and sufficient study of these properties to determine what their values are and whether these values are of sufficient importance to make the properties eligible for the National Register of Historic Places. In the process of such study, it should become apparent which properties contain significant scientific, prehistoric, historic, or archeological data. Once the undertaking's impact on such properties has been evaluated, it will then be possible to ascertain whether data recovery constitutes an appropriate mitigation action, and it is at this point that the Archeological and Historic Preservation Act can be effectively utilized.

The guidelines presented in this appendix are the same as those required to identify properties eligible for the National Register of Historic Places pursuant to section 106 of NHPA as amended and to sections 2(a), 2(b), and (where applicable) 1(3) of Executive Order 11593. Although prepared for publication under these authorities, they are presented here for the convenience of Federal agencies and other users.

I. *General Conduct of Location and Identification Studies.* Although the exact activities necessary for the identification of historic properties will vary depending on the nature of agency landholdings or jurisdiction and, where applicable, on the nature of the agency's undertaking, the following steps will generally be appropriate.

1. *Background Research and Evaluation of Existing Data.*—a. Since few areas of the Nation have yet been adequately surveyed for historic properties, current lists of such properties seldom provide adequate information for full identification. Documentary research is the starting place for any identification study, however. Systematic study and evaluation of documentary data will usually permit predictions to be made about the kinds of historic properties that may be encountered in the area, and about their possible distributions. Such study may also make it possible to develop a broad evaluatory framework within which the significance of particular properties can be judged. Finally, background research may pinpoint some particular properties that are already adequately documented or properties that are known but need further study to obtain full documentation. In undertaking background research, answers to the following questions should be sought:

(1) Are there known historic properties in the area?

(2) Is knowledge about the presence or absence of historic properties based on a survey or surveys carried out according to the standards set forth in this appendix?

(3) If not, to what extent are survey data lacking?

(4) If the area has not been systematically surveyed, what predictions can be made about the location or kinds of historic properties to be expected based on data from nearby surveyed areas, from the known history of the area, from the constraints known to be imposed by the natural environment, etc.?

(5) Given the known history and prehistory of the region, the social and cultural concerns of its people, and pertinent State, local, and regional plans, what kinds of preservation and/or research priorities appear to be appropriate, and what kinds of historic properties might be important to the satisfaction of these priorities?

b. The agency undertaking a location and identification study, should be vigorous in searching out useful sources of data, and should encourage innovative approaches in their use to predict the locations of properties and to develop evalutory frameworks. It must be recognized, however, that some institutions and organizations that maintain lists, files, or other bodies of unpublished data are legitimately concerned about the integrity of these documents and/or about the cost involved in permitting their use; these concerns shoud be ascertained and, if legitimate, honored. At least the following sources of background data should be consulted:

(1) The State Historic Preservation Officer should be consulted with reference to the State Historic Preservation Plan maintained by his office, to obtain such data as:

(a) Information on properties listed in or nominated to the National Register, properties on other lists, inventories, or registers known to the State Historic Preservation Officer, and properties on which the State has evaluated and unevaluated survey data;

(b) Information on predictive data regarding potential properties in the area;

(c) Recommendations as to the need for surveys in the area;

(d) Recommendations concerning methods that should be used in conducting such surveys and possible sources of professional expertise;

(e) Results of any previous surveys in the area, and the State Historic Preservation Officer's comments thereon; and

(f) Recommendations concerning pertinent State or local laws and policies concerning historic properties.

(2) Basic published and unpublished sources on local history, prehistory, anthropology, ethnohistory, and ecology should be studied to obtain an overview of the region's potential historic property distributions and research or preservation values.

(3) The National Register and other lists or files of data on historic properties should be consulted. The National Register is published in its entirety in the FEDERAL REGISTER, usually in February of each year; additions are published regularly in the FEDERAL REGISTER. The most recent full publication and subsequent additions should be consulted to determine whether any properties exist in an area to be affected by a Federal undertaking. The National Register listings are also accompanied by a list of properties in both Federal and nonfederal ownership which have been determined to be eligible for inclusion as well as a list of pending nominations. The catalogs of the Historic American Buildings Survey and the Historic American Engineering Record maintained by the National Park Service, and any similar surveys and published reports should be utilized. State, university, or professional society historians, architects, architectural historians, and archeologists, and local organizations may also have registers, inventories, catalogs, or other lists of sites or areas with known or presumed historic values.

(4) Persons with first-hand knowledge of historic properties and/or their historic values should be interviewed where feasible and appropriate. Such interviews, and a proper respect for the opinions expressed by those interviewed, are of particular importance where properties of cultural importance to local communities or social groups may be involved. Oral data should be elicited and recorded using existing professional methods such as those prescribed by the Oral History Association, Box 13734, N.T. Station, Denton, Texas 76203.

c. Background research should be undertaken by or under the supervision of professional historians, architectural historians, historical architects, and/or archeologists. It will often be necessary to draw upon the services of specialists such as ethno-historians, anthropologists, sociologists, and cultural geographers to make full use of documentary data.

2. *Field Inspection.* If review and evaluation of existing information fails to produce complete data based upon prior professional examination of the area subject to environmental impact, then the background research should be supplemented by direct examination of the area of concern.

a. Staff and Planning. Field inspection usually can be performed only by professional historians, archeologists, architectural historians, and historical architects. It will sometimes be necessary or useful to call upon additional specialists to deal with particular characteristics of the area. For example, if industrial properties are present the services of an industrial historian or an industrial archeologist may be appropriate, and if the continuing ways of life of local social or ethnic groups are important to understanding historic properties, social or cultural anthropologists and folklorists may be necessary additions to the staff. If paleontological materials are likely in cultural context (i.e. in association with cultural material) the services of a professional paleontologist would be necessary. The exact nature of the appropriate staff will depend on the kinds of data that can be expected

to occur. For example, it is obviously unreasonable to employ an architectural historian in the absence of buildings or structures.

The nature of the area will also affect the kinds of methods that must be employed. Urban areas and rural areas require different approaches. Terrain, vegetation, land ownership and other factors will also affect the time required to conduct an inspection and the kinds of techniques that will be required to complete it. For example, if few indications of archeological sites are likely to appear on the surface of the ground due to vegetation, alluviation, or other factors, it will probably be necessary for archeologists to undertake subsurface testing both to locate sites and to obtain sufficient information for evaluation purposes.

Agencies planning field inspection should take factors such as the above into account in preparing work plans, and should consult with the Secretary, the State Historic Preservation Officer, and/or other qualified persons or groups to determine exactly what special approaches may be necessary.

Adequate records must be kept of all field inspections to clearly indicate what lands were inspected, the degree of intensity with which they were inspected, the kinds of historic properties sought, all historic properties recorded, and any factors that may have affected the quality of the observations.

b. Levels of field inspection: The intensity of field inspection in advance of an undertaking should be commensurate with the projected impact of the undertaking.

An undertaking whose only effects will be indirect and diffuse—for instance an undertaking whose sole effect will be to permit generalized population growth in a large area—will generally require a systematic sample reconnaissance, or some other less intensive field inspection than will an undertaking having definable direct impacts.

The level of project planning will also affect the nature of field inspection undertaken; at an early level of planning, when many options are open for location of project facilities, low-intensity reconaissance may be appropriate to provide planning guidance; when alternative project locations have been reduced, a much more intensive survey will usually be necessary.

Although many different types of field inspections may be appropriate in different situations, such inspections generally fall into two types: reconaissance survey and intensive survey.

3. *Reconnaissance Survey*—Full identification of historic properties for purposes of determination of eligibility and detailed planning normally requires that an intensive survey be conducted as discussed at section I.4 of this appendix. Some agencies however, may find it helpful to their planning activities to conduct reconnaissance surveys in order to obtain preliminary or predictive data on the distribution and nature of historic properties. Reconnaissance survey is designed to provide a general impression of an area's historic properties and their values, and involves small-scale field work relative to the overall size of the area being studied. Although reconnaissance survey will seldom if ever provide sufficient data to insure identification of all historic properties in an area, it should make it possible to identify obvious or well-known properties, to check the existence and condition of properties tentatively identified or predicted from background research, to identify areas where historic properties are obviously lacking, and to indicate where certain kinds of properties are likely to occur, thus making possible a more informed and efficient intensive survey at a later stage in planning.

In areas of potential direct impact from Federal undertakings, reconnaissance survey should be used only as a preliminary to an intensive survey, unless the reconnaissance reveals that it is impossible or extremely unlikely for historic properties to occur in the area. In areas of potential indirect impact, reconnaissance may provide sufficient data to permit an agency to evaluate its possible impacts and to develop plans to assist local agencies in avoiding or mitigating such impacts. In cases where a Federal agency intends to license or permit a State, local, or private undertaking, particularly if the undertaking involves large land areas, a reconnaissance may provide the agency with sufficient information to permit the development of protective stipulations in the permit or license. An agency that participates in many small-scale undertakings in a large region may find it useful to undertake a reconnaissance of the region in order to develop a basis for making decisions about the need for intensive surveys on individual projects, or to obtain guidance in the kinds of survey activities that may be needed. Although a reconnaissance survey will not ordinarily provide sufficient data to insure identification of all historic properties under the jurisdiction or control of, or subject to impact by a Federal agency, it may be a very useful tool for effective agency planning. A reconnaissance survey is preceded by adequate background research as discussed above. In the field an effort is made to gain a sufficient impression of the area under consideration, and its cultural resources, at least to permit predictions to be made about the distribution of historic properties within the area and the potential significance of such properties. For small areas, a superficial visit to the area by professionals in pertinent disciplines (architectural historians, historians, archeologists, and others whose expertise is appropriate to the study of the area) may be sufficient for reconnaissance purposes. Such a reconnaissance should provide an informed general opinion about the kinds of properties that might be encountered and the appropriate methods to be used in completing an intensive survey if such a survey is necessary. For larger areas, a more systematic approach to reconnaissance survey is usually necessary. For archeological resources this usually involves the detailed inspection of selected lands representing a statistically valid sample of the entire area, from which projections can be made to the entire area. Comprehensive drive-through or walking inspections of architecturally significant resources or at least spot-checks of various neighborhoods, within the area, are appropriate for the characterization of architectural resources in such a reconnaissance. Coordination in the field with local parties interested in or knowledgeable about the area's history and historic properties is appropriate during a reconnaissance as during an intensive survey.

4. *Intensive Survey.* An intensive survey is a systematic detailed field inspection done by or under the supervision of professional architectural historians, historians, archeologists, and/or other appropriate specialists. This type of study is usually required to determine the significance of properties and their eligibility for listing in the National Register. It is preceded by adequate background research as discussed above. All districts, sites, buildings, structures, and objects of possible historical or architectural value are examined by or under the supervision of a professional historian, architectural historian, or historical architect. Persons knowledgeable in the history, prehistory, and folkways of the area are interviewed by or under the supervision of a professional historian, ethnohistorian, cultural anthropologist, or folklorist. The surface of the land and all districts, sites, buildings, and objects of possible archeological value are inspected by or under the supervision of a professional archeologist. Historic archeologists are employed where historic sites are likely, prehistoric archeologists are used if prehistoric sites are probable. Systematic subsurface testing is conducted if necessary to locate or obtain full descriptive and evaluative data. Documentary data necessary to the evaluation of specific properties are compiled and analyzed. A systematic effort is made to identify all properties within the area of concern that might qualify for the National Register, and to record sufficient information to permit their evaluation. All historic properties should be evaluated against the criteria established at 36 CFR 60.6, and supporting documentation should be developed with reference to the standards published in the FEDERAL REGISTER for comment on April 27, 1976, as 36 CFR 63, Appendix A. Since the precise kinds of field activities necessary to identify historic properties vary among the different regions of the United States, it is vital that agencies preparing to undertake intensive surveys consult with the State Historic Preservation Officer and other sources of professional guidance in developing plans for such surveys.

II. *Special Considerations with respect to Submerged Lands.* For submerged lands documentary research by qualified researchers may serve to indicate the need for, and recommended location of, physical and/or electronic surveys for submerged archeological sites and sunken vessels. Because of the specialized nature and problems attending underwater survey activities, agency officials may wish to determine specific survey procedures in consultation with the Director, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C. 20240.

III. *Documenting Location and Identification Studies.* The nature and level of specificity required in documenting a location and identification study will vary somewhat with the scope and kind of undertaking (if any) for which the study is conducted, the kinds of information already on hand about the area being studied, and other factors. In general, however, it is necessary to document the methods used in conducting the study, the assumptions that guided the application of the methods, the results of applying the methods, and any deficiencies in these results that may have arisen from the application or misapplication of the methods. Typically, the report of a location and identification study should contain the following types of information.

1. *Description of the study area.* Boundaries of the area should be indicated and the rationale used in defining the boundaries should be presented. Topographic and environmental characteristics that might affect the distribution, significance, or preservation of historic properties should be described.

2. *Background research and preparation.* Documentary data and, where relevant, data from oral sources pertinent to the study should be discussed and evaluated. Sources utilized should be identified, and methods of analysis presented and discussed. Background data should be analyzed in such a way as to form a basis for planning any necessary field investigations, and for evaluating the significance of properties that may be discovered. Accordingly, the researcher should indicate a familiarity not only with

local history and prehistory, but also with the professional literature in history, architecture, anthropology, archeology, or other disciplines that may provide bases for evaluating historic properties.

3. *Research Design.* The report should also set forth the research design or plan of study that guided the work, discussing what sorts of historic properties were expected in the area, what historic values they might represent, and what strategies were to be employed in seeking the resources. Often it will be possible to make specific predictions about what kinds of properties can be expected in the field and how they ought to appear. The researcher should also set forth any biases or sources of error that can be identified as having potentially influenced the results of the study. For example, researchers trained specifically in prehistoric archeology may be unable to accurately observe historic properties; if this bias is not corrected by adding an historian, historic archeologist, or architectural historian to the study team, it should be explicitly acknowledged in the report as a possible source of error.

4. *Field Inspection.* The composition of the field study team should be presented. An attempt should be made to insure that all pertinent professional disciplines are represented in this team. Names and qualifications of team members and consultants should be presented and their duties discussed. It is the researcher's obligation to employ persons and methods that will insure the accurate recognition of all classes of historic properties. Methods used in seeking, observing, and recording historic properties should be clearly set forth. The extent to which the study area was fully covered by inspectors on foot should be presented, textually and/or using maps and charts. Any portion of the area not inspected, or inspected at a lower level of intensity, should be indicated and discussed. On-the-ground observational procedures should be presented.

a. In reporting the inspection of lands thought to contain nonstructural historic properties, or structures in ruins, the following should normally be discussed:

(1) How surveyors were distributed over the study area, how far apart they were placed and in what directions they walked;

(2) What signs of historic and/or prehistoric activity surveyors were instructed to seek;

(3) What special techniques, if any, were used to seek special kinds of properties thought to occur in the area (e.g., rock art, standing structures), and/or to cope with special difficulties (e.g., pavement, heavy brush, overburden);

(4) If subsurface testing was done, under what conditions it was done, what techniques were used, and where it was done; and

(5) If less than the entire area was inspected, a sampling design should be presented and justified.

b. In reporting the inspection of lands containing buildings, and/or structures, the following should normally be discussed:

(1) How surveyors covered the area—by foot, auto, etc.;

(2) Whether surveyors proceeded individually or as teams;

(3) Intensity of inspection of properties; did the inspection address only facades? exteriors? interiors?

(4) How much of the area was covered at a time; did the inspection cover the entire area, proceed in stages, or cover only a portion? The rationale for the coverage strategy should be presented; and

(5) What kinds of properties were surveyors instructed to seek (e.g., industrial as well as domestic buildings; vernacular architecture as well as "high style" buildings; buildings representing different "themes")?

c. The above categories are not presented as a "check list," but as an example of the kinds of questions that should be answerable using the report of a field inspection. To the extent possible, archeological and architectural/historical inspections should be coordinated, since many properties discovered may be of both archeological and historic architectural importance.

d. All procedures used should be justified in terms of their applicability to the area, its potential properties, its environment, and the plan of study.

5. *Results.* a. If an intensive survey has been done, all historic properties should be clearly and completely described. To the extent possible, documentation of properties should refer to Appendix A to the "Procedures for Requesting Determination of Eligibility," 36 CFR Part 63, published for comment in the FEDERAL REGISTER, April 27, 1976. Documentation can be provided on standard forms or as text, but should be complete and internally consistent.

b. If a reconnaissance survey has been done, the predicted distributions of historic properties should be presented and justified on the basis of background research and field inspection. Specific historic properties actually recorded during the field inspection should be described, insofar as possible, as set forth at section III(5)(a) above.

c. Negative data, as well as positive data should be presented and discussed, i.e., if historic properties were not found, this fact should be noted and, if possible, accounted for.

6. *Evaluation.*—a. Evaluations of historic properties should be made in sufficient detail to provide an understanding of the historical values that they represent, so that this understanding can serve as a basis for managing the properties or planning impact-mitigation programs if necessary. Properties of importance to a community, neighborhood, social or ethnic group should be discussed with reference to the values and concerns of those to whom the properties may be important.

b. If an intensive survey has been done, all historic properties should be evaluated against the criteria of eligibility for the National Register of Historic Places set forth at 36 CFR 60.6.

c. If a reconnaissance survey has been done, to the extent possible, the predicted significance of each kind of historic property likely to occur within the study area should be presented and justified in relation to its general cultural setting, with reference to the criteria set forth at 36 CFR 60.6.

7. *Recommendations.* In most cases it is expected that the report will provide recommendations concerning any need that may exist for further study, evaluation, or, where applicable, impact mitigation.

8. *Accompanying photographs, graphics, and tabular material.* A location and identification study report should contain sufficient photographs, maps, charts, tables, and appendix material to insure its accurate use for study and planning purposes.

APPENDIX C—PROFESSIONAL QUALIFICATIONS

1. Basic professional Occupation Standards. It is essential that any project proposal identify suitably qualified key professional personnel. Basic minimum qualifications for these types of personnel who most often serve as principal investigators and key consultants on contract projects are given below. Agencies which undertake or evaluate identification or data recovery projects using their own employees should also insure that these qualifications are possessed by appropriate staff members in a manner consistent with applicable Civil Service requirements. Professional personnel of the Department of the Interior are available at all times to consult with other Federal, State and local agencies regarding the application of these criteria in given instances. For these services agency officials should contact the Chief, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington D.C. 20240. In the following definitions, a month of professional experience need not consist of a continuous month of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a month of full-time experience.

a. History. The minimum professional qualifications in history are a graduate degree in American history or a closely related field; or a bachelor's degree in history or a closely related field plus one of the following: (a) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or (b) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

b. Archeology. The minimum professional qualifications in archeology are (a) a graduate degree in archeology, anthropology, or closely related field, or equivalent training accepted for accreditation purposes by the Society of Professional Archeologists, (b) demonstrated ability to carry research to completion, usually evidenced by timely completion of theses, research reports, or similar documents, and (c) at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience in archeological field research and at least one year of experience and/or specialized training in the kind of activity the individual proposes to practice. For example, persons supervising field archeology should have at least 1 year or its equivalent in field experience and/or specialized field training, including at least six months in a supervisory role. Persons engaged to do archival or documentary research should have had at least 1 year experience and/or specialized training in such work. Archeologists engaged in regional or agency planning or compliance with historic preservation procedures should have had at least 1 year of experience in work directly pertinent to planning, compliance actions, etc., and/or specialized historic preservation or cultural resource management training. A practitioner of prehistoric archeology should have had at least 1 year of experience or specialized training in research concerning archeological resources of the prehistoric period. A practitioner of historic archeology should have had at least 1 year of experience in research concerning archeological resources of the historic period. Experience in archeological research in the region where the project will be undertaken is usually desirable.

c. Architectural History. The minimum professional qualifications in architectural history are a graduate degree in architectural history, historic preservation, or closely related field, with course work in American architectural history; or a bachelor's degree in architectural history, with a concentration in American architecture; or a bachelor's degree in architectural history, historic preservation, or closely related field plus one of the following:

(1) At least two years full-time experience in research, writing, or teaching in American history or restoration architecture with an academic institution, historical organization

or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

d. Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least 2 years of full-time professional experience in architecture; or a State license to practice architecture.

e. Historical Architecture. The minimum professional qualifications in historical architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

(1) At least 1 year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field and at least 1 year of full-time professional experience on preservation and restoration projects; or

(2) At least 2 years of full-time professional experience on preservation and restoration projects. Experience on preservation and restoration projects shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

APPENDIX D—RECOMMENDATIONS FOR THE PROCUREMENT OF LOCATION, IDENTIFICATION, AND DATA RECOVERY PROGRAMS

The following recommendations are provided under the Department of the Interior's responsibilities under section 5(c) of the Act, to coordinate all Federal survey and data recovery activities authorized by the Act. They are based on the Department's 30 years of experience in the procurement of archeological, architectural, and historical services in the location, identification, and study of historic properties.

1. The nature of required identification and data recovery programs varies with the kinds of historic properties expected or data to be recovered. The kinds of data to be recovered depend on both the information content of the properties to be investigated and the research questions that can be asked about the properties. Designing responsible identification and data recovery programs is a complex, professional activity, as is judging the quality of proposals from potential contractors and evaluating the final products of work performed. To the extent possible, the Department will assist Federal agencies in designing high-quality scopes-of-work and in evaluating offerers. Those agencies intending to undertake substantial independent data recovery activities, however, should review their staffs and procedures to insure that (1) adequate expertise in archeology, history, architectural history, and/or other appropriate disciplines is represented to provide professional oversight of contract operations, and (2) adequate provision is made for receiving and utilizing input from agencies, institutions, organizations, and qualified individuals who can advise the agency in professional matters relating to archeological and historic data recovery.

2. Because the requirements of any given data recovery program will depend both on the data content of the property and the research questions relevant to its investigation, it is extremely difficult to define standard specifications for required contractual services and end products. As a result, negotiated competitive procurement is recommended for most kinds of data recovery activities. Sole source contracting has been found by the Office of Archeology and Historic Preservation to often result in low quality work by restricting intellectual competition among offerers, and has been difficult to justify within Federal procurement regulations. On the other hand, formal advertising with price as the sole criterion for selection of a contractor has proven to be unsatisfactory as a method of insuring high-quality work because of the lack of a clearly specifiable end product. As a rule, negotiated competitive procurement has been found to be the most effective approach to obtaining high-quality services for location and identification of historic properties as well. Agencies that anticipate the need for very small-scale location and identification projects may find it useful to group these together and solicit proposals for an annual package of jobs. The following procedural steps are recommended in general for the procurement of location, identification, and data recovery programs:

a. Preparation of a Request for Proposals. The request for proposals should include a scope-of-work usually including the following elements:

(1) A description of the undertaking requiring the identification or data recovery activity, including a statement of the present status of planning, status of compliance with historic preservation authorities, and a projected timetable for future actions;

(2) The location of the undertaking including information on the size of the area to be affected, the terrain, access, land ownership, or other factors that might affect the logistics of identification or data recovery;

(3) For identification projects, the kinds of descriptive and evaluatory output required by statute and procedures; and

(4) For data recovery projects, the property or properties to be investigated, and the data or research values the property or properties are (is) known or thought to represent.

b. The request for proposals should be circulated to all qualified and potentially interested contractors, including both local and non-local universities, colleges, museums, private firms, and individuals, and should be advertised in "Commerce Business Daily". Advertising in journals, newsletters, and other media likely to be seen by potential offerers, and distribution through the State Historic Preservation Officer, are desirable. The Department will assist agencies in compiling lists of potential offerers upon request.

c. Offerers should provide proposals for undertaking the requested work, setting forth their staff qualifications, facilities, research designs, and project plans.

d. Proposals should be evaluated for responsiveness and professional quality, and ranked accordingly, prior to a consideration of bids. The Department will provide qualified assistance in evaluating proposals upon request, to the extent permitted by staff limitations.

Dated: January 19, 1977.

GARY EVERHARDT,
Director, National Park Service.

[FR Doc.77-2399 Filed 1-27-77;8:45 am]

POSTAL SERVICE

[39 CFR Part 6]

GOVERNMENT IN THE SUNSHINE ACT—BYLAWS OF THE BOARD OF GOVERNORS

Proposed Rulemaking

Correction

In FR Doc. 77-1096 appearing at page 2699 in the issue of Thursday, January 13, 1977 the following corrections should be made.

1. On page 2702, middle column, in § 6.1 insert the following line immediately above the last line in the column, "ing may be varied by action of the".

2. On page 2702, third column, in § 6.3 the 16th and 17th lines are transposed and should read:
"previous oral notice, must be sent in sufficient time to reach that address at least".

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 676-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Texas and New Mexico

On March 21, 1975, the Governor of Texas submitted a revision to the State Implementation Plan (SIP) concerning the re-classification of several Air Quality Control Regions (AQCRs) with respect to particulate matter, sulfur oxides, and carbon monoxide. The public hearing for this revision was conducted by the State on January 16, 1975. On October 1, 1975, the Texas Air Control Board (TACB) was notified of EPA's preliminary analysis results. On August 2, 1976, the Governor submitted a revision to Section IX, Air Quality Surveillance, of the SIP subsequent to a public hearing conducted by the State on April 6, 1976. In this revision, monitoring equipment requirements for sulfur oxides were proposed based on the preliminary evaluation results of the re-classification revision. Therefore, this notice of proposed rulemaking concerns both revisions to the Texas SIP.

AQCR RE-CLASSIFICATION

The priority re-classification revision concerns the pollutants and AQCRs indicated below. The original classifications are compared with the new classifications proposed by the State.

AQCR No.	Name	Pollutant	Original priority	Proposed priority
210	Abilene-Wichita Falls	Particulate	II	III
		Sulfur oxides	II	III
211	Amarillo-Lubbock	Particulate	II	III
		Sulfur oxides	I	III
213	Brownsville-Laredo	Particulate	I	III
214	Corpus Christi-Victoria	Sulfur oxides	I	II
153	El Paso-Las Cruces-Alamogordo	Carbon monoxide	I	III
		Sulfur oxides	I	IA

The criteria for AQCR priority classifications originally promulgated by EPA were measured ambient air quality or estimated air quality where measured data were not available. In addition, population data could be used to classify AQCRs

for carbon monoxide, photochemical oxidants, and nitrogen dioxide if measured air quality data were not available for these pollutants. The original priority classifications shown above were set in 1971. Measured ambient air quality data collected by the TACB for particulate matter and sulfur dioxide were used as the basis for the priority classifications for these pollutants. For carbon monoxide, the priority classification was based on a limited amount of measured air quality data collected by EPA during a three month period (June 26–September 30) in 1971.

EPA Evaluation Results

An AQCR priority classification change is considered warranted and approvable if it can be shown that errors were made in the original measurement or estimation of air quality data. A change from a classification of 1 to a 1A is considered approvable if it can be shown that emissions of a pollutant in an AQCR are predominantly from a single point source.

Particulate Matter

The particulate matter air quality data used to make the original priority classifications for the Abilene-Wichita Falls, Amarillo-Lubbock, and Brownsville-Laredo AQCRs have been reviewed, and these data support the original classification designations. No information was submitted with the State's proposed revision to show that errors were made in data collection and analysis. Measured ambient air quality data in these AQCRs for 1972 through 1975 agree in magnitude with the original data. Since no support for changing the original priority classifications is provided, the revision with respect to particulate is not considered approvable.

Sulfur Dioxide

A limited amount of measured sulfur dioxide air quality data collected by the TACB prior to SIP development were used to make the original priority classifications in the Abilene-Wichita Falls, Amarillo-Lubbock, and Corpus Christi-Victoria AQCRs. The annual arithmetic means and maximum eight-hour averages for each AQCR support the new State proposed priority classifications. Additional support is provided by air quality measurements in 1973, 1974, and 1975. None of these data suggest a priority classification more restrictive than those that are proposed. Therefore, the revision with respect to sulfur dioxide is considered approvable.

For the El Paso-Las Cruces-Alamogordo AQCR, the new State proposed priority classification for sulfur dioxide is 1A. This classification is applicable where emissions are predominantly from a single point source. In 1973, sulfur dioxide emissions from American Smelting and Refining Company in El Paso were 201,546 tons per year. These emissions represent approximately 94 percent of the total sulfur dioxide emissions in the AQCR. The proposed 1A priority classification is therefore considered approvable.

Carbon Monoxide

Measured air quality data for carbon monoxide were collected by EPA during 1971. An eight-hour maximum value of 15.0 miligrams per cubic meter was used in the original classification of the El Paso-Las Cruces-Alamogordo AQCR as priority 1 for carbon monoxide. Since carbon monoxide air quality measurements during 1973, 1974, and 1975 in both the Texas and New Mexico portions of the AQCR are similar in magnitude to the original air quality measurements, there is no indication that the priority classification was incorrect. No information was submitted with the State's proposed revision to show that errors were made in data collection and analysis. Therefore, the revision with respect to carbon monoxide is not considered approvable.

Effects of the Proposed Revision

Priority classifications were made originally to facilitate SIP development and evaluation. Priority classifications now serve only to designate the need for emergency episode control, and to define air monitoring equipment requirements. Based on the proposed classifications for sulfur dioxide, emergency episode plans (§ 51.16) would no longer be required in the Abilene-Wichita Falls and Amarillo-Lubbock AQCRs, and only contingency plans (§ 51.16(g)) would be required in the Corpus Christi-Victoria AQCR and the Texas and New Mexico portions of the El Paso-Las Cruces-Alamogordo AQCR. Air quality surveillance equipment requirements (§ 51.17) for sulfur dioxide would be reduced accordingly for each affected AQCR, including the New Mexico portion of the El Paso-Las Cruces-Alamogordo AQCR.

Air Monitoring Network

The proposed revision to the air quality surveillance network includes the addition of non-continuous monitoring sites in the cities of Arlington, Corpus Christi, Dallas, Gregory, and Midland. Non-continuous sites for Beach City, Beeville, Houston, and San Angelo are deleted from the network. Seven continuous monitoring sites are added in Houston for use during emergency episode situations. A continuous site for downtown Houston is proposed to become operational by 1977. The sulfur dioxide monitoring requirements are changed to reflect the new requirements resulting from priority classification changes as discussed above.

Purpose of Proposal

In the SIP submitted on January 28, 1972, the air quality surveillance portion of the plan met the minimum requirements of § 51.17 of 40 CFR Part 51, and was approved as a result. For many AQCRs existing sites and those planned for installation exceeded minimum requirements. It has become apparent that the air quality surveillance network originally envisioned by the TACB will require more manpower and financial resources than will be available. Therefore, the purpose of this proposed revision is to eliminate unnecessary monitoring sites so that the total network can be effectively supported with available resources.

Review of Public Comments

During discussion of the testimony presented by the Dallas Environmental Health and Conservation Department (EHCD), the EHCD agreed to operate eight high volume particulate sites in the Dallas area. The EHCD also recommended the addition of one of their continuous monitoring sites to the network. The TACB suggested that the site may be added to the network at a later date after data compatability procedures had been completed. The TACB amended the original proposal to include the City of Houston's monitoring sites as real-time emergency episode sites. EPA recommended that a continuous site for carbon monoxide be included in the proposed revision for the downtown Houston area. The TACB amended the proposal to include this recommendation. EPA recommended that continuous carbon monoxide sites be located in the downtown areas of Austin, Dallas, Fort Worth, and San Antonio because such locations are expected to represent "areas of maximum concentration". The TACB maintains that the carbon monoxide monitoring sites should be located in areas of "maximum population exposure."

EPA Evaluation Results

The proposed revision to the air quality surveillance network meets or exceeds the minimum EPA equipment requirements for high volume particulate samplers, gas bubblers for sulfur dioxide, and continuous monitors for sulfur dioxide, carbon monoxide, and photochemical oxidants (measured as ozone). Based on pollutant priority classification, the TACB should designate at least one site as a "maximum concentration" site in the Brownsville-Laredo and Metropolitan San Antonio AQCRs. Sites for measuring particulate matter during air pollution emergency episodes should be designated for the Brownsville-Laredo, Corpus Christi-Victoria, Metropolitan Houston-Galveston, and El Paso-Las Cruces-Alamongordo AQCRs. Maximum concentration and emergency episode sites were properly designated for carbon monoxide and photochemical oxidants. Based on the results of the evaluation, EPA agrees with the proposed revision of the State's air surveillance network.

All previously approved parts of the air quality surveillance system such as sampling schedules, sample analysis, and data handling, which are not affected by the proposed revision, remain in effect.

Copies of the State's proposed SIP revisions along with EPA's rationale for the proposed actions are available for public inspection at the EPA Region VI

Office in Dallas, Texas (see complete address below). Copies of these materials are also available at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this proposed rulemaking by submitting written comments to the Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas, 75270. All comments received on or before February 28, 1977, will be considered.

(Sec. 110(a) Clean Air Act as amended, 42 USC 1856c-5(a).)

Dated: January 4, 1977.

JOHN C. WHITE,
Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart GG—New Mexico

§ 52.1621 [Amended]

1. In § 52.1621, the table is revised by changing the classification for sulfur oxides in the El Paso-Las Cruces-Alamogordo. Interstate Region from "1" to "1A".

Subpart SS—Texas

1. In § 52.2270, paragraph (c) is amended by adding paragraphs (10) and (11) as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(10) A revision of priority classifications for particulate matter, sulfur oxides, and carbon monoxide was submitted by the Governor on March 21, 1975. (Non-Regulatory)

(11) A revision of Section IX, Air Quality Surveillance, was submitted by the Governor on August 2, 1976. (Non-Regulatory)

§ 52.2271 [Amended]

2. In § 52.2271, the table is revised by changing the classification for sulfur oxides in the Abilene-Wichita Falls Intrastate Region from "11" to "111", in the Amarillo-Lubbock Intrastate Region from "1" to "111", in the Corpus Christi-Victoria Intrastate Region from "1" to "11", and the El Paso-Las Cruces-Alamogordo Interstate Region from "1" to "1A".

[FR Doc.77-2746 Filed 1-27-77;8:45 am]

[40 CFR Part 52]

[FRL 676-52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Bay Area Air Pollution Control District's Rules & Regulations in State of California

On December 13, 1972, July 25, 1973, November 2, 1973, July 19, 1974, October 23, 1974, January 10, 1975, April 10, 1975, November 3, 1975, February 10, 1976, April 21, 1976, August 2, 1976, and November 10, 1976, the Air Resources Board of the State of California submitted revised Rules and Regulations of the Bay Area Air Pollution Control District (APCD) as a revision to the California State Implementation Plan. The submissions listed above will be addressed in this notice, except when such submissions are deficient in a specific area. In this event, the appropriate portions of the earlier submissions have been evaluated and will be discussed in this notice.

SUMMARY OF REGULATIONS SUBMITTED

REGULATION 1

This regulation was submitted on July 25, 1973 and partial revisions to Division 3 of the regulation were submitted on July 19, 1974 and February 10, 1976. Since these three submittals taken together represent the most recent version of this regulation, they will be addressed in this notice.

The changes contained in these submittals that are being acted upon by this package include the following: addition of certain definitions; exceptions for burning; addition of criteria which must be complied with during any burning; addition of authority of the public officer to grant waivers from the open burning requirements if it is necessary for the public safety; and other minor changes of a procedural nature.

REGULATION 2

The November 2, 1973 submittal of this regulation supersedes all previous submittals and is currently effective, except that Division 2 was revised in both the January 10, 1975 and August 2, 1976 submittals; Division 3 was revised in both the July 19, 1974 and the April 21, 1976 submittals; and Divisions 15, 16, 17 and 18 were added in the August 2, 1976 submittal. Additionally, that portion of the July 19, 1974 revision to Division 3 which deals with SO_2 will be covered in a separate FEDERAL REGISTER notice.

Section 3212, submitted by the Air Resources Board on April 21, 1976, which concerns malfunctions is not being acted upon in this notice, but will be addressed in a later FEDERAL REGISTER notice dealing with SIP malfunction provisions.

The significant changes to the Bay Area APCD New Source Review rules, Regulation 2, Division 13, submitted on November 2, 1973, July 19 ,1974, October 23, 1974 January 10 1975, April 10, 1975 November 3 1975, and August 2, 1976, will be acted upon in a separate FEDERAL REGISTER notice.

A new section dealing with continuous in-stack monitoring for specific pollutants was submitted on April 21, 1976. The date by which the State of California is required to meet the provisions of 40 CFR 51.19(e) has been extended from October 6, 1976 to April 6, 1977. Additionally, recently developed state guidelines on continuous in-stack monitoring may cause changes to these as well as other APCD regulations. Therefore, the Federal rulemaking on this subject will occur in a separate FEDERAL REGISTER notice.

Those portions of this regulation concerning transfer of gasoline into stationary storage containers and vehicle fuel tanks submitted on April 10, 1975 and November 3, 1975, are not being acted upon in the notice because of the many unique questions involved in this area of air pollution control. These regulations are to be addressed in a separate FEDERAL REGISTER notice.

This package addresses the following changes contained in the November 2, 1973, July 19, 1974, January 10, 1975, April 21, 1976, and August 2, 1976 submittals: Addition of definitions; revisions to analytical procedures for determining the amount of hydrogen sulfide in samples; addition of regulations controlling reduction of animal matter and asphalt air blowing; and other minor changes of a procedural nature. A regulation controlling odorous substances was also received to be included in the SIP. We are not taking any action on this regulation since it is not a pollutant regulated under the Clean Air Act.

REGULATION 3

Regulation 3 was submitted on July 25, 1973 and revisions were submitted on January 10, 1975, April 21, 1976, and November 10, 1976. This regulation contains specific control requirements for organic emissions from solvent usage, from storage tanks and the filling of transportable containers other than the gasoline vapor control requirements of Regulation 2, as well as a general organic emission limitation.

This package addresses the regulation's approvability and its equivalency to the Federally promulgated organic solvent usage regulation, 40 CFR 52.254.

This package also addresses the approvability of organic liquid storage regulations which contain an exemption if the headspace reactivity is less than 5 percent.

Section 3203, submitted by the Air Resources Board on April 21, 1976, which concerns malfunctions is not being acted upon in this notice, but will be addressed in a later FEDERAL REGISTER notice dealing with SIP malfunction provisions.

REGULATION 4

The July 25, 1973 submittal of this regulation supersedes all previous submittals. This regulation requires the installation of crankcase devices on 1955 through 1962 model year motor vehicles.

REGULATION 5

Regulation 5, Episode Warning System, submitted on July 25, 1973, dealing with the Air Pollution Emergency Contingency Plan, is not being acted upon at this time because the Air Resources Board has indicated to EPA that a revision is forthcoming of all local agency regulations addressing the emergency episode requirements. This action by the State is in response to the recent approval by EPA of the State of California Air Pollution Emergency Episode Plan. The State's plan sets forth requirements the local agencies' plans must meet. A separate FEDERAL REGISTER no-

tice addressing this issue will be published after the submission to EPA of the local agency emergency episode regulations by the State.

REGULATION 6

The February 10, 1976 submittal of this regulation supersedes all previous submittals. This regulation concerns a procedural change to the APCD enforcement authority.

REGULATION 7

The January 10, 1975 submittal of this regulation supersedes all previous submittals. This regulation deals with New Source Performance Standards. This regulation is not required by 40 CFR Part 51 to be incorporated into the SIP, but since it has been submitted as a revision, it is being acted upon by this package. EPA delegated authority to implement and enforce these regulations to the Bay Area Air Pollution Control District in the FEDERAL REGISTER (40 FR 42236) on September 11, 1975.

REGULATION 8

The January 10, 1975 submittal of this regulation supersedes all previous submittals. This regulation deals with Emission Standards for Hazardous Pollutants. This regulation is also not required by 40 CFR Part 51 to be incorporated into the SIP, but since it has been submitted as a revision, it is being acted upon by this package. EPA delegated authority to implement and enforce these regulations to the Bay Area Air Pollution Control District in the FEDERAL REGISTER (40 FR 42236) on September 11, 1975.

PROPOSED ACTION

It is the purpose of this notice to propose approval of all the changes included in the July 25, 1973, November 2, 1973, July 19, 1974, January 10, 1975, February 10, 1976, April 21, 1976, August 2, 1976, and November 10, 1976 submissions, with the exception of the regulations concerning new source review, emergency episode, gasoline vapor recovery, malfunction, in-stack monitoring, and sulfur dioxide, which are not being acted upon at this time. In addition, the portions of Regulation 3 discussed hereafter are proposed to be disapproved.

It is the purpose of this notice to propose disapproval of sections of the Bay Area Air Pollution Control District's (BAAPCD) Regulation 3, dealing with organic solvent controls, contained in the January 10, 1975 submission.

On November 12, 1973 (38 FR 31249), the Administrator promulgated organic solvent usage regulations for the San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Interstate Air Quality Control Regions, 40 CFR 52.254, as one of the control measures of the California Transportation Control Plan, and as part of the California SIP. On October 2, 1974, the BAAPCD amended their regulations for reactive organic gas emissions, Regulation 3, to be more consistent with EPA's promulgated organic solvent usage control regulations. In reviewing the BAAPCD's regulations, EPA found portions inconsistent with the Federally promulgated regulations. In addition, the regulations submitted on January 10, 1975 contain provisions that conflict with the regulatory amendments made on October 2, 1974.

EPA's organic solvent usage control requirements (40 CFR 52.254) identify categories of sources, and the necessary emission limitations for such sources. Categories of specific concern are oven operations emitting organic materials in excess of 15 pounds per day, non-oven operations emitting organic materials in excess of 40 pounds per day if photochemically reactive solvents are used, and operations emitting organic materials in excess of 3,000 pounds per day if non-photochemically reactive solvents are used.

The BAAPCD emission limitations for organic solvent usage in oven operations (Section 3101.1) and in non-oven operations emitting organic materials in excess of 40 pounds per day if photochemically reactive solvents are used (Section 3101.2) are similar to those promulgated by EPA. However, provision is made, at the discretion of the Control Officer, for alternative means of emission reduction (Section 3101.4) which differ from that specified in the above mentioned emission limitations. Under this approach, the emission reductions that are greater than that required of a source can be credited towards achieving the emission limitations of other sources at a facility. Since the BAAPCD emission reductions are determined on the basis of "reactive organic compounds" rather than on total organic materials, this alternative compliance provision may result in a greater overall emission rate from a facility than would occur if the facility were in compliance with the Federal regulation.

It should be noted here that the BAAPCD enforcement practices concerning the use of this alternative means of emission reduction have not interpreted the term "reactive organic compounds" as defined in Section 2032.1.

Therefore, this BAAPCD alternative compliance approach does not achieve equivalent emission reductions as would the Federal regulation on a source by source basis, and may not achieve equivalent emission reductions as would the Federal regulation for the facility as a whole. This alternative approach neither ensures use of the best available control technology for significant sources of organic solvent emissions, nor does it offer incentives for the use of less polluting alternative technologies for the spectrum of emitting sources. Further, it conflicts with standard control practices employed in other areas of the country, particularly those in use in Southern California, and with EPA research results indicating the need for maximum control of virtually all organic material emissions except methane in order to achieve and maintain the National Ambient Air Quality Standards for Photochemical Oxidants.

The Regulation 3 requirement covering operations emitting organic materials in excess of 3,000 pounds per day if non-photochemically reactive solvents are used (Section 3101.3) is not identical or equivalent to that of EPA. EPA's requirement for this category covers new and existing sources, whereas the BAAPCD's requirement applies only to new or modified sources.

Regulation 3 provides for water to be included as part of the total volume of solvent in making the determination of a solvent's classification as non-photochemically reactive or photochemically reactive (Section 2010 and 2011). The inclusion of water allows a greater percentage of reactive materials than does the solvent classification procedures under EPA's regulation (40 CFR 52.254 (k)).

Regulation 3 defines "85 percent overall" (Section 2001) as the degree of control which results in 85 percent reduction in the quantity of the reactive organic compounds. This is not equivalent to the total organic reduction specified in the Federal regulation (40 CFR 52.254).

Regulation 3 defines "reactive organic compounds" (Section 2032.1) on the basis of the composition of an emission condensate and differs from the Federal method of using the composition of the solvent itself for the reactivity classification. Representative samples are not obtainable from an emission condensate approach for processes with multiple stacks given the range of evaporate characteristics of a solvents components. Therefore, this definition is not equivalent to that specified in the Federal regulation (40 CFR 52.254(k)).

Regulation 3, Division 3, contains source operation exemption provisions: *Provided*, That modern maintenance and operating practices are used. Section 3301.12 exempts all printing presses other than rotogravure printing presses. Section 3302.1 exempts ovens used for epoxy resin casting. Section 3302.5 exempts unheated solvent rinsing containers and unheated coating dip tanks if of 100 gallon capacity or less. Such exemptions are not authorized by Federal regulation (40 CFR 52.254).

The existing BAAPCD control requirements that conflict with the regulatory amendments made on October 2, 1974, are identified below:

Section 1214 dealing with the percentage of reactive organic compounds in the organic gas.

Section 1215 providing an exemption if reactive organic gas emissions are reduced by 85 percent.

Finally, the analytical procedures contained in Division 6 of Regulation 3 have not been modified to reflect the requirements of the organic solvent control provisions and are not adequate to determine the compliance status of a source. No provision is made for determining the concentrations of branched chain ketones, aromatic compounds with 8 or more carbon atoms, or the exempted chemical compounds (ethylbenzene, phenyl acetate, and methyl benzoate) as specified in Section 2032.1. The BAAPCD

may have established acceptable analytical procedures for the enforcement of this regulation; but they are not contained in the most recent submittals of Regulation 3.

In summary, these conflicting control requirements and exemptions make the organic solvent control requirements of Regulation 3 less stringent than those promulgated by EPA, and are the basis for this proposed disapproval. All provisions of 40 CFR 52.254 will remain in effect.

It is also the purpose of this notice to propose disapproval of sections of BAAPCD's Regulation 3, dealing with storage of organic liquids, contained in the January 10, 1975 submission.

The BAAPCD emission limitations for storage of organic liquids (§ 3102–3102.6) contain exemption provisions for organics which have a headspace reactivity of 5 percent or less. These sections can allow the storage of gasoline in tanks without a floating roof or a vapor recovery system. It is EPA's intention to propose a Federal Regulation controlling the emissions from the storage of organic liquids which does not contain a headspace reactivity exemption. This action is being taken because National Ambient Air Quality Standards for oxidants are currently being violated in the San Francisco Bay Area Air Quality Control Region and because the BAAPCD regulation represents less control than that obtained through the application of reasonably available control technology.

Therefore, it is the purpose of this notice to propose a Federal replacement regulation which is identical to the BAAPCD's Regulation 3, § 3102–3102.6 without the headspace reactivity exemption provision.

Pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision and, therefore, invites public comment on the State's submission and his proposed approval or disapproval.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.

California Air Resources Board, 1709—11th Street, Sacramento, California 95814.

Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111.

Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments to the Regional Administrator; Attention: Air and Hazardous Materials Division; EPA; Region IX; 100 California Street; San Francisco, California 94111. Relevant comments received on or before February 28, 1977, will be considered.

Comments received will be available for inspection during normal working hours at the Region IX office and the EPA Public Information Reference Unit.

(Sec. 110 Clean Air Act, as amended (42 U.S.C. 1857c-5))

Dated: January 18, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-2745 Filed 1-27-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 228]

[FRA Docket No. HS-2, Notice No. 4]

CONSTRUCTION OF RAILROAD EMPLOYEE SLEEPING QUARTERS

Public Hearing

On December 3, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a notice of proposed rulemaking on regulations concerning the location of railroad employee sleeping quarters in conformity with section 2(a)(4) of the Hours of Service Act (45 U.S.C. 62(a)(4)), as amended by section 4 of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94-348, 90 Stat. 818 (41 FR 53070). Under an extension published in the FEDERAL REGISTER of January 14, 1977, written comments on the rulemaking are due by February 17, 1977 (42 FR 2994). Interim regulations implementing section 2(a)(4) are presently in effect (41 FR 53028; December 3, 1976). FRA administers and enforces the Hours of Service Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

The Association of American Railroads has requested that FRA "conduct a hearing on the record with the opportunity for interested parties to question all other parties on matters of fact and opinion contained in their respective presentations" to be held "no sooner than twenty days after the due date for the submission of statements herein, to give all parties adequate opportunity to examine the written submissions".

As set forth in 49 CFR Part 211, the FRA Rules of Practice, it is FRA policy that rulemaking hearings are conducted when required by statute or when deemed necessary or desirable (see revision of Part 211 at 41 FR 54181; December 13, 1976). Such hearings are opportunities for the oral presentation of data, views and arguments. FRA rulemaking hearings are not adversary proceedings and the agency is not limited to the hearing transcript or written submissions in fashioning final rules. 49 CFR 211.25. Neither the Hours of Service Act nor any statute which FRA administers requires rulemaking to be conducted "on the record after opportunity for an agency hearing" as that phrase is employed in the Administrative Procedure Act. Indeed, the Hours of Service Act does not require that there be any opportunity for oral presentations. However, FRA does desire to receive the views of interested persons on this topic and to permit such exchange of views as may contribute to an informed agency judgment.

Therefore, FRA will conduct an informal rulemaking hearing at 10 a.m. on March 1, 1977, in Room 6200, Nassif Building, 400 7th Street, SW., Washington, D.C. FRA believes that this hearing date will provide an ample opportunity for persons to review the written submissions in advance and prepare statements for presentation at the hearing. All interested persons are invited to attend and participate.

The hearing will be presided over by a hearing officer designated by the Associate Administrator for Safety. After an introduction on the subject matter, interested persons will be invited to make oral presentations. If necessary to assure full participation, the hearing officer may limit the duration of statements. To the extent possible after completion of initial statements, opportunity will be provided for statements responsive to the comments of other participants. There will be no cross-examination of persons making statements. However, questions will be permitted for the purpose of clarifying the substance of any oral comment.

A transcript of the hearing will be prepared and placed in the public docket. To assist the reporter and the hearing officer, any person intending to deliver a prepared statement is encouraged to make four copies of the statement available to the hearing officer before the start of the hearing. Additional procedures may be announced at the hearing.

Issued in Washington, D.C. on January 24, 1977.

DONALD W. BENNETT,
Associate Administrator for Safety.

[FR Doc.77-2784 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 33]

SPORT FISHING

Proposed Opening of Hillside National Wildlife Refuge, Mississippi, to Sport Fishing

Notice is hereby given that it is proposed that 50 CFR Part 33 be amended by the addition of the Hillside National Wildlife Refuge, Mississippi, to the list of refuge areas open for support fishing, which is published at 50 CFR 33.4.

Pursuant to the authority of 16 U.S.C. 668dd(d), as redelegated to the Director of the United State Fish and Wildlife Service at DM 242.1.1, the Director may open refuge areas to sport fishing when a determination has been made that such activity is compatible with the major purposes for which the area was established. As a general rule, most areas within the National Wildlife Refuge System are closed to sport fishing until officially opened by regulation. It is the pur-

pose of this proposed rulemaking to allow sport fishing on Hillside National Wildlife Refuge, which is presently prohibited.

Furthermore, pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared on this proposal which will help determine whether this rulemaking constitutes a major federal action significantly affecting the human environment. A copy of this assessment is available at the address below.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Therefore, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240, on or before February 28, 1977. All relevant comments received will be considered by the Director prior to the issuance of final rulemaking.

Accordingly, it is proposed to amend § 33.4, in Title 50 of the Code of Federal Regulations as set forth below:

§ 33.40 List of open areas, sport fishing.

* * * * *

MISSISSIPPI

HILLSIDE NATIONAL WILDLIFE REFUGE

* * * * *

Dated: January 24, 1977.

F. EUGENE HESTER,
Acting Director, United States Fish and Wildlife Service.

[FR Doc.77-2803 Filed 1-27-77;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.

DEPARTMENT OF AGRICULTURE

Forest Service

OREGON DUNES NATIONAL RECREATION AREA ADVISORY COUNCIL

Meeting

The Oregon Dunes National Recreation Area Advisory Council will meet on Friday, March 18, 1977, at 10 am, in the NRA Headquarters Conference Room at 855 Highway Avenue, Reedsport, Oregon.

The purpose of the meeting will be to review the Final EIS for the Management Plan and Wilderness Suitability Report and to discuss the ORV closure that went into effect on January 1, 1977.

The meeting will be open to the public. Persons who wish to attend should notify Lorraine Potter, 855 Highway Avenue, Reedsport, Oregon 97467. The telephone number is (503) 271-3611. Written statements may be filed with the Council before or after the meetings.

The Council has established the following rules for public participation. Any member of the public who wishes to speak must be recognized by the Council Chairman. The Chairman will decide the time when public participation will take place.

ROBERT L. SCHRENK,
Area Ranger.

JANUARY 21, 1977.

[FR Doc.77-2749 Filed 1-27-77;8:45 am]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

NATIONAL ADVISORY COMMITTEE ON AN ACCESSIBLE ENVIRONMENT

Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that meeting of the National Advisory Committee on an Accessible Environment will be held on February 12-13, 9 a.m., at the Stouffer's Denver Hotel, 3203 Quebec Street, Denver, Colorado, 80207.

The National Advisory Committee on an Accessible Environment is established under the 1974 amendments to the Rehabilitation Act, Pub. L. 93-516, 29 U.S.C. 792 et seq. The Committee is established to provide advice, guidance, and recommendations to the Architectural and Transportation Barriers Compliance Board in carrying out its functions.

The meeting of the Committee shall be open to the public. On the first day the Committee Chairman will discuss activities since the previous meeting and call for government spokespersons to report on program activities and plans of the Architectural and Transportation Barriers Compliance Board. On the second day, the Committee will discuss compliance and related procedures. The proposed afternoon agenda calls for the Committee to discuss its organization and plans for future procedures.

Persons interested in attending the meeting should contact Ms. Laurinda Street, SW., Washington, D.C. 20201, Transportation Barriers Compliance Board, Mary E. Switzer Building. 330 C Street, SW., Washington, D.C. 20201, telephone (202) 245-1801.

JAMES S. JEFFERS,
Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc.77-2799 Filed 1-27-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 27573; Agreement C.A.B. 26035, R-1 through R-12; Agreement C.A.B. 26176; Agreement C.A.B. 26191; Order 77-1-136]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to North Atlantic Cargo Rates; Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of January 1977.

By Order 76-12-98, December 16, 1976, the Board generally approved an agreement among the carrier members of the International Air Transport Association (IATA) establishing North Atlantic cargo rates through September 30, 1977. A joint petition for reconsideration has been submitted by Trans International Airlines, Inc. (TIA), and World Airways, Inc. (World).

In their petition, TIA and World submit that in approving new high weightbreak (10,000 and 34,000 kg.) specific commodity rates as part of the subject IATA agreement the Board included in footnote 13 of the order a "gratuitous statement regarding the relationship between cargo charter costs and the costs of high weightbreak scheduled cargo services", which petitioners allege has no evidentiary basis in the record and appears to prejudge important issues in the *Transatlantic FAK Container and Charter Freight Rates Investigation*, Docket 27557.[1] TIA and World request the Board to delete footnote 13 from the order; and further request the Board to supply interested parties in Docket 27557 with copies of Board studies or other information on which the alleged conclusions in footnote 13 were based, for examination and rebuttal in the *Transatlantic FAK and Charter Rates Investigation* to avoid an ex parte determination on a critical matter in that proceeding. TIA and World allege further that it is inappropriate for the Board to reach even tentative conclusions on the issue of relative costs of cargo charter and scheduled services; and that even the final sentence of the challenged footnote, stating that the issue will be decided in Docket 27557, in no way diminishes the prejudicial atmosphere created by these alleged tentative conclusions.

The Board has concluded to deny the petition. The challenged language in footnote 13 is not based on any ex parte or other "studies" or information concerning the costs of cargo charters vs. scheduled cargo operations, and makes no conclusion, tentative or otherwise, as to their relative levels. It is clear from the language used, that no issues have been predetermined by Order 76-12-98 and that *all* pertinent issues will be determined on the basis of the record in Docket 27557.

Accordingly, *it is ordered*, That:

The petition of Trans International Airlines, Inc., and World Airways, Inc., for reconsideration of Order 76-12-98 be and hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2822 Filed 1-27-77;8:45 am]

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[1] Footnote 13 an page 9 of Order 76-12-98 reads as follows:

As indicated above, the new high-weightbreak SCR's would be set at levels equivalent to the new minimum charter rates. It is recognized that the board has previously taken the position that rates for scheduled services should generally be priced at higher levels than those for charter services, in view of the lower load factors and higher unit costs associated with scheduled services. However, under many circumstances, such as the critical time requirements of the charterer, the possibility of unusual shipment characteristics, the one-way nature of cargo charter flights, as well as the off-route operations frequently experienced, and in general the difficulty of arranging crews and equipment to satisfy the requirements, it may not be unreasonable to expect that the costs of cargo charter service are somewhat higher than those of scheduled service. We would emphasize that these factors as well as others are the subject of the ongoing *Transatlantic FAK Container and Charter Freight Rates Investigation*, Docket 27557, and will be determined in that proceeding.

[Order 77-1-130; Docket 27573; Agreement C.A.B. 26384]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Specific Commodity Rates

Issued under delegated authority January 24, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names an additional specific commodity rate as set forth below, reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notice to the carriers and promulgated in an IATA letter dated January 12, 1977.

Specific Commodity Item No.	*Description and rate*
0003--------	Foodstuffs, spices, and beverages, excluding caviar and hatching eggs, 232 cents per kilograms,[1] minimum weight 200 kg 222 cents per kilograms,[1] minimum weight 500 kg from Johannesburg to New York.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *it is ordered,* That:

Agreement C.A.B. 26384 is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

JAMES L. DEEGAN,
Chief, Passenger and Cargo Rates Division, Bureau of Economics.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2825 Filed 1-27-77;8:45 am]

[1] Expires March 31, 1978.

[Order 77-1-126; Docket 29860]

TRANS WORLD AIRLINES, INC.

Category Y Tariffs; Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of January, 1977.

The Board, by Order 76-10-48, served October 12, 1976, suspended the Category Y tariffs[1] of Trans World Airlines, Inc. (TWA) pending an investigation. A petition for reconsideration was filed by TWA on October 22, 1976, and answers by Pan American World Airways, Inc. (Pan Am) and Member Carriers of the National Air Carrier Association (NACA) were filed in opposition.

TWA alleges that the Board's findings that its Category Y services present the possibilities of regular passenger displacement during peak travel periods and self-diversion of Category A and Z traffic are speculative and unsupportable. Despite its inability to conduct Category B charter flights as alternative service, TWA argues that the problem of displacement of regular fare traffic by Category Y traffic is no different in the case of TWA than in the cases of Pan Am and Northwest Airlines Inc. (Northwest), whose Category Y tariffs were not suspended. The carrier claims that the scheduling procedures it has arranged with the Department of Defense (DOD) prevent anticipated conflicts between Category Y traffic and regular traffic, and that a Category Y tariff provision allows for reaccommodation of the military passengers on later flights when there is conflict. Regarding the Board's conclusion that higher fare Category A and Z traffic could be diverted to TWA's proposed Category Y service, TWA argues that this is not a problem unique to TWA, and that all of the projected Category Y passengers will be "new" traffic, and will not consist of diverted Category A or Z passengers.

Pan Am and NACA concur in the Board's decision to suspend TWA's tariff and urge the Board to deny TWA's petition for reconsideration. Pan Am argues that the New York-Mediterranean routes are not suited for Category B operations, and that in the absence of a Category Y program all of the military traffic would move on Category Z service. In addition, Pan Am argues that Category Y should be limited to a true substitution for Category B services, and that TWA's tariff represents an attempt by DOD to expand Category Y in order to secure the advantages of scheduled service at planeload charter rates.

Upon consideration of the petition and answers, we find that TWA has not raised sufficient facts to warrant reconsideration of Order 76-10-48. TWA's allegation that the Category Y passengers will be "new" traffic is unsubstantiated by any data, and the remainder of TWA's arguments do not contain any information about military procurement of civilian airlift or the Category Y program in particular that was not considered previously. Thus, TWA has failed to demonstrate error in the Board's conclusion that there are significant differences between the circumstances surrounding the TWA Category Y proposal and those of Pan Am and Northwest, and that these differences require suspension of the TWA tariff.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

The petition filed by Trans World Airlines, Inc. for reconsideration of Order 76-10-48 be and hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

Minetti and West, members, concurring:

We concur in the decision to deny the petition for reconsideration. We continue to object, however, to the majority's insistence on distinguishing this tariff from those of Northwest and Pan American which we would have suspended. See our concurring statement to Order 76-10-48, September 30, 1976; our dissent from Order 76-3-45, March 8, 1976; and, our concurrence and dissent in Order 75-7-104, July 22, 1975.

G. JOSEPH MINETTI.
LEE R. WEST

[FR Doc.77-2874 Filed 1-27-77;8:45 am]

[1] Local Military Passenger Fares Tariff No. MAC-1 C.A.B. No. 308, filed September 1, 1976 to become effective October 1, 1976. The suspension was made effective December 1, 1976.

CIVIL SERVICE COMMISSION

DEPARTMENT OF DEFENSE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary (Near East, African and South Asian Affairs), ODAS (Near Eastern, Africa and South Asian Af-

fairs), OASD (International Security Affairs), Office of the Secretary of Defense.

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

[FR Doc.77-2629 Filed 1-27-77;8:45 am]

CIVIL SERVICE COMMISSION

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director, Natural Resources and Commercial Services, Office of the Director, Office of Science and Technology Policy.

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

[FR Doc.77-2552 Filed 1-27-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Executive Secretary, Federal Coordinating Council for Science, Engineering, and Technology, Office of the Director, Office of Science and Technology Policy.

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

[FR Doc.77-2553 Filed 1-27-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director for Human Resources, Social and Economic Services, Office of the Director, Office of Science and Technology Policy.

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

[FR Doc.77-2554 Filed 1-24-77;8:45 am]

EXECUTIVE OFFICE OF THE PRESIDENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Executive Office of the President to fill by noncareer executive assignment in the excepted service the position of Assistant Director, National Security Affairs, Office of the Director, Office of Science and Technology Policy.

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

[FR Doc.77-2555 Filed 1-27-77;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977

Additions

Notice of proposed additions to Procurement List 1977, November 18, 1976 (41 FR 50975) of the commodity and service listed below was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53126) and November 30, 1976 (41 FR 52512).

After consideration of all the relevant data presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Government under Pub. L. 92-28, 85 Stat. 77. Accordingly, they are hereby added to the Procurement List.

Class 5940

Terminal Lug (SH), 5940-00-549-6581.

SIC 7542

Vehicle Detailing (SH), Duluth, Minnesota, plus 10-mile radius.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2604 Filed 1-27-77;8:45 am]

PROCUREMENT LIST 1977

Deletions

Notice of proposed deletions from Procurement List 1977, November 18, 1976 (41 FR 50975) was published in the FEDERAL REGISTER on December 10, 1976 (41 FR 54021).

After consideration of all the relevant data presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Government under Pub. L. 92-28, 85 Stat. 77. Accordingly, they are hereby deleted from the Procurement List.

Class 3990

Cap, Wood,
3990-00-366-6824.

SIC 7331

Mailing Service, U.S. Coast Guard Academy, New London, Connecticut.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2789 Filed 1-27-77;8:45 am]

PROCUREMENT LIST 1977

Proposed Deletion

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77 of the proposed deletion of the following service from Procurement List 1977, November 18, 1976 (41 FR 50975).

SIC 7331

Mailing Service, Center for Disease Control, Bethesda, Maryland.

Comments and views regarding the proposed deletion may be filed with the Committee on or before March 2, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Sreet North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-2788 Filed 1-27-77;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS RECEIVED FROM JANUARY 17 THROUGH JANUARY 21, 1977

Environmental impact statements received by the Council on Environmental Quality from January 17 through January 21, 1977. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the *minimum* period for public review and comment on draft environmental impact statements in forty-five (45) days from this *Federal Register* notice of availability. (March 14, 1977). The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3365.

FOREST SERVICE

Final

William B. Bankhead National Forest Timber Plan, Winston, Lawrence, and Franklin

Counties, Ala., January 19: Proposed is the implementation of a Timber Management Plan for the William B. Bankhead National Forest covering the period July 1, 1976 to September 30, 1986. The Bankhead National Forest contains 179,294 acres of which 162,728 acres are classified as commercial forest land. The plan proposes even-aged forest management for that part of the Forest which is suitable for sustained yield timber production and not reserved for some other use. Average annual potential yield is 10.4 million board feet of saw timber and 2,279 thousand cubic feet of small roundwood products. Negative impacts include loss of pleasing forest scenery and temporary increases in turbidity and stream flow. Comments made by: FPC, USDA, AHP, COE, DOI, HEW, ERDA, and EPA. (ELR Order No. 70077.)

Santa Fe National Forest, Geothermal Leasing, Rio Arriba and Sandoval Counties, N. Mex., January 19: Proposed is the leasing of a 51,571 acre Known Geothermal Resource Area (KGRA) in Santa Fe National Forest and a 29,000 acre area of noncompetitive leasing interest outside the KGRA. The Statement also covers a larger area of about 496,950 gross acres extending southward and northeastward known as an area prospectively valuable for geothermal resources, which includes both the KGRA and noncompetitive area. Potential adverse effects include displacement of soils, removal of surface vegetation, and changes in the quality and quantity of water produced from this area. Comments made by: DOI, USDA, EPA, DOC and State and local agencies, and concerned citizens. (ELR Order No. 70074.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft

Haddock, Cod, and Yellowtail Flounder, Management Plan, January 21: Proposed is a management plan for the domestic harvesting of haddock (Melanogrammus aeglefinus), cod (Gadus Morhua), and yellowtail flounder (Limanda ferruginea) off the Northeastern United States. These fisheries were regulated under the terms of the 18-member International Commission for the Northwest Atlantic Fisheries (ICNAF), as amended until December 31, 1976, when the U.S. withdrew from the convention. This plan proposes regulatory measures and restrictions are recommended regarding quotas, fishing areas, mesh size, and minimum size limits. Beneficial effects are expected. (ELR Order No. 70091.)

Final

Seamount Trawl Fishery Resources, Preliminary Management Plan, January 21: The proposed action sets forth a preliminary management plan for the seamount trawl fishery resources in the western Pacific Region (Hawaii, Guam, and American Samoa). There is presently no U.S. harvesting of armorheads or alfonsins. Armorheads make up over 90% of the foreign trawl catches on the seamounts; alfonsins are only a minor constituent. The proposed action temporarily restricts the foreign harvest to a 2,000 metric tons catch quota, which may be taken with a trawling effort not to exceed 60 vessel-days, beginning March 1, 1977. Comments made by: COE, EPA, Japanese fishing agency, and University of Hawaii. (ELR Order No. 70085.)

Western Pacific Precious Corals, Preliminary Management Plan, January 21: This statement sets forth a Preliminary Management Plan for the precious coral resources of the Western Pacific Region (Hawaii, Guam, and American Samoa). The proposed action prohibits the direct foreign harvest of precious corals from any bed in the zone until such bed has been surveyed and scientifically assessed, and until the level of surplus yield for foreign vessels has been determined. The action also prohibits the incidental killing or harvesting of precious corals, except when the same is judged by the Secretary of Commerce to not seriously damage U.S. interests. Comments made by: DOC, COE, Japanese fishery agency, and concerned persons and groups. (ELR Order No. 70086.)

E. Bering Sea and Gulf of Alaska Shrimp, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for northern pandalid shrimp in the eastern Bering Sea and Gulf of Alaska. No foreign fishery is to be permitted since the domestic fishery has the capacity and desire to harvest the total allowable catch of 50,000 metric tons. Foreign application to continue the fishery is anticipated. Comments made by: COE, DOI, USDA, USCG, EPA, STAT, DOT, and State and local agencies, and concerned citizens. (ELR Order No. 70087.)

High Seas Salmon Fisheries of Japan, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for the salmon of U.S. origin taken in the high seas salmon fishery of Japan. Although the Fishery Conservation and Management Act of 1975 (P.L. 94-265) would require no allowable catch of salmon by Japan within the U.S. fishery zone and beyond, the North Pacific Fisheries Treaty remains in force until one year after any signatory nation gives notice of its intention of terminating the Convention. Consequently, the foreign fishery for the highseas can be expected to continue at least through the 1977 season. Comments made by: EPA, USCG, 2 State and local agencies, and concerned citizens. (ELR Order No. 70088.)

Pacific Coast Troll Salmon Fishery, Preliminary Management Plan, January 21: Proposed is the adoption and implementation of a preliminary fishery management plan for the troll salmon fishery of the Pacific Coast. The purpose of the plan is to manage the troll salmon fishery off the coast of the U.S. for the optimum sustainable yield, and to allocate harvest between domestic and foreign fishermen. The plan recommends that there be no decision on the total allowable levels of foreign (Canadian) fishing until a new salmon treaty is consummated. Comments made by: USCG, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 70090.)

Trawl Fishery of the Washington-Oregon-California Region, Preliminary Management Plan, Washington, Oregon, and California, January 21: The proposed action is to adopt and implement a preliminary fishery management plan for the trawl fishery of Washington, Oregon, and California. Specific TACs are given for Pacific hake (150,000 metric tons), rockfishes (19,000 metric tons), flounders (31,100 metric tons), sablefish (7,000 metric tons), and jack mackerel (55,000 metric tons). Conservation and management measures recommended are designed to regulate the foreign fisheries and preserve options for U.S. entry when economic conditions permit. Comments made by: USCG, EPA, and State and local agencies, and concerned citizens. (ELR Order No. 70039.)

DEPARTMENT OF DEFENSE

ARMY

Contact: Mr. George A. Cunney, Jr., Acting Chief, Environmental Office, Directorate of Installations, Office of the Deputy Chief of Staff for Logistics, Washington, D.C. 20310, (202)—OX 4-4269

Supplement

Fort Belvoir Family Housing Project (S-1) Fairfax County, Va., January 21: This statement supplements a final EIS filed with CEQ in May 1976. Proposed is the construction of 444 four bedroom units of family housing for members of the Army, Navy, and Coast Guard stationed in the Washington, D.C. area. This is a reduction of 1,856 units from the total reported in the final EIS. Adverse impacts include destruction of 90 acres of wildlife, slight increases in air and noise pollution, increased storm water run-off, increased traffic, and increased strain on some service facilities at the Fort. (ELR Order No. 70084)

DEPARTMENT OF DEFENSE

ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Development, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202)-693-6795.

Draft

Mamaroneck, Sheldrake, Byram R.'s Flood Control, New York and Connecticut: Proposed is a flood control plan for the Mamaroneck and Sheldrake Rivers Basin (Village and Town of Mamaroneck, N.Y.) and for Byram River Basin (Greenwich, Connecticut and Port Chester, N.Y.). The project is broken down into four component parts: Village of Mamaroneck-Mamaroneck River, Village of Mamaroneck-Sheldrake River, Town of Mamaroneck-Sheldrake River, and Port Chester and Greenwich-Byram. Each respective section is discussed at length. Adverse effects include removal of vegetation, and some loss of fish and wildlife habitat. (New York District) ELR ORDER No. 70076)

Coal Transfer Facility, Ohio R. Mile 314.5, Lawrence County, Ohio, January 19: Proposed is the construction, operation, and maintenance of a proposed coal loading facility consisting of a floating dock made up of two barges, a crusher, and a conveyor system. Coal from the Tri-State area would be delivered to the facility by truck over existing roads, dumped into a 25-foot square bin, and moved by an enclosed conveyor to the crusher. The coal would then be moved by an enclosed conveyor equipped with side boards and a catch pan to the barges. Adverse effects include some increase in water pollution to the Ohio River. (Huntington District) (ELR ORDER No. 70078)

Final

Humboldt Harbor and Bay, Navigation Improvements, Humboldt County, Calif., January 18: Proposed are navigation channel improvements for Humbolt Harbor and Bay, California. Projected improvements include widening of three North Bay channel bends up to an additional 200 feet; deepening the North Bay, Samoa and Eureka Channels to 35 feet; widening part of the Samoa Channel to 400 feet; and constructing a turning basin at the end of the Samoa Channel. Project implementation will necessitate the removal of about two square miles of benthic habitat. Shallow groundwater supplies near the disposal site may become saline (San Francisco District). Comments made by: AHP, USDA, HEW, DOC, DOI, EPA, state and local agencies, and concerned citizens. (ELR Order No. 70066).

Redwood Shores Regional Shopping Center, Permit, San Mateo County, Calif., January 18: Mobil Oil Estates Limited, Redwood City, California, has applied for a Department of the Army permit to fill and do storm drainage improvements on the ap-

proximately 210-acre area and to improve the existing dike along Steinberger Slough in preparation for the eventual construction of a regional shopping center. Adverse effects include: change in land use from open space to urban area, loss of levee-impounded marshland, changes in air and water quality, change in noise levels, and water runoff alteration (San Francisco District). Comments made by: USDA, DOC, HEW, DOI, DOT, EPA, state and local agencies, concerned groups and persons. (ELR order No. 70068).

Supplement

Hawaii Kai Marina (S-1), Oahu County, Hawaii, January 17: The statement supplements a final EIS filed with CEQ in January 1976 regarding permit actions in the Hawaii Kai Marina. The supplement introduces the concept of the general permit and conditions under which the construction of individual docks and similar structures for small boats in the Hawaii Kai Marina will be authorized. As discussed in the final EIS, construction of boat docks in the marina would shade bottom areas, limiting benthic growth, would possibly interfere with water circulation and mixing, and would be a potential source of petrochemical pollutants. (Honolulu District) (ELR Order No. 70062).

DEPARTMENT OF DEFENSE

NAVY

Draft

Ready Missile Test Facility, Project P-875, Ventura County, Calif., January 19: The proposed action is entitled Military Construction Project P-875: "Ready Missile Test Facility." This action involves the construction of 15 small buildings on 5 acres of mudflat at the Pacific Missile Test Center, Point Mugu, California. It will involve dredging about 25,000 cubic yards of mud out of an intertidal mudflat and filling it in with about 100,000 cubic yards of sand. The purpose of the project is to provide facilities for testing air-launched missiles with line warheads and motors. Few adverse effects are anticipated. (ELR Order No. 70080).

Contact: Mr. Peter M. McDavitt, Special Assistant to the Assistant Secretary of the Navy (Installations and Logistics), Washington, D.C. 20350, 202-692-3227.

Final

POL-Bulk Pipelines, Naval Supply Center, Norfolk, Va., January 19: Proposed is the construction of a 10" multipurpose (DFM and JP-5) fuel line to connect the 2,740,000 barrel tankage at the U.S. Naval Bulk Storage Facility, Craney Island, with the smaller tankage at the Naval Station, Destroyer-Submarine Piers (D&S), and with the contiguous Naval Air Station. An 8" sludge line (ballast and only wastewater) will also be constructed connecting the Naval Fuel Depoot, Craney Island, with the D&S piers. Short term impacts to wtaer quality are expected from the dredging and redistribution of sediments. Comments made by: COE, EPA, DOI, DOT, state and local agencies, and concerned citizens. (ELR order No. 70031.)

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Contact: Mr. W. Herbert Pennington, Office of Assistant Adminstrator, E-201, ERDA, Washington, D.C. 20545, (301)—973-4241.

Draft

Safety Research Experiment Facilities, Idaho Lab, Idaho, January 18: This statement was prepared in support of ERDA's proposal for legislative authorization and appropriations for the Safety Research Experiment Facilities (SAREF) Project. The purpose of the proposed project is to modify some existing facilities and provide a new test facility at the Idaho National Engineering Laboratory for conducting fast breeder reactor (FBR) safety experiments. The proposed facilities provide for the in-reactor testing of large bundles of prototypical FBR fuel elements under a wide variety of conditions. (ELR Order No. 70072).

Nevada Test Site Testing Activities, Nye County, Nev., January 18: This statement considers underground nuclear detonation with yields of one megaton or less, along with the preparations necessary for such detonations at the Nevada Test Site (NTS). The testing activities considered also include other continuing and intermittent activities, both nuclear and nonnuclear, which can best be conducted in the remote and controlled area of the NTS. Provision is also made for the study of geologic formations at the NTS for possible use in the ERDA program for management of commercially generated high-level radioactive wastes. (ELR Order No. 70070).

Intermed. Level Radioactive Waste Management, Roane County, Oak Ridge, Tenn., January 17: The proposed action is the selection of a preferred technique for the management of intermediate level radioactive liquid waste (ILW) and the construction and operation of a facility to implement the technique at the Oak Ridge National Laboratory (ORNL) in Roane County, Tennessee. Current ERDA activities at ORNL annually generate about 3 million gallons of ILW which is evaporated to reduce the volume. Three alternative management techniques are assessed: hydrofracture, shale-cement fixation, and glass fixation. The overall impact of any of the techniques would be expected to be beneficial, since each would remove large volumes of radioactive waste from existing storage facilities. (ELR Order No. 70061).

FEDERAL ENERGY ADMINISTRATION

Contact: Dr. Robert Stern, Director, Office of Environmental Impact, Federal Energy Administration, New Post Office Building, Room 7119, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, 202-566-9760.

Draft

Kleer Mine, SPR, Van Zandt County, Tex., January 21: This statement involves the implementation of the Strategic Petroleum Reserve, Title I, Part B, of the Energy Policy and Conservation Act of 1975 (P.L. 94-163). The Reserve will store 150 million barrels of oil by December of 1978 in the Early Storage Reserve (ESR), and 500 million barrels by 1982 under the entire program. The candidate site discussed would be part of the ESR and would involve storage of 30 million barrels of oil in a conventional salt mine located in Grand Saline, Texas. The storage of oil at Kleer Mine would be implemented at an existing underground salt mine presently owned and operated by the Morton Salt Company. (ELR Order No. 70083).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7258, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6308.

Draft

Merrillville Terrace Multifamily Project, Lake County, Ind., January 18: Proposed is the development of Merrillville Terrace on 60.2 acres over a period of 5 years. The first phase of development will be 425 multifamily units (out of a total of 787) on 36.33 acres. Plans call for an open space recreation area with clubhouse, pool, and tennis courts. Commercial development is planned on 17.2 acres adjoining on the west by a different developer. Construction of Merrillville Terrace will result in slightly increased vehicular use of existing streets in the area. (ELR Order No. 70069.)

Memorial Parkway Subdivision, Harris Co., Harris County, Tex., January 19: The proposed action is the acceptance for HUD/FHA mortgage insurance purposes of the 1,169-acre Memorial Parkway Subdivision located in Harris County, Texas. When completed in approximately 6 years, the subdivision will contain 3,842 single-family homes plus some attached single-family and multi-family housing, and shopping and recreational facilities. Adverse impacts will be removal of agricultural land from production and an increased demand for fossil fuels through heavy dependence on the automobile for transportation. (ELR Order No. 70075.)

Final

Trans Union Development, Diamond Path Addition, Dakota County, Minn., January 18: Developers of this 1,200 housing unit development propose that HUD provide mortgage insurance for 149 single-family homes in the first stage. The development covers 322 acres of cultivated agricultural land. Adverse effects include removal of farmland from production, increased noise and air pollution, increased traffic, increased demand for public services and facilities, and lack of low and moderate income housing. Comments made by: DOT, EPA, GSA, DOD, HEW, DOI, (ELR Order No. 70067.)

SECTION 104(H)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local chief executive. (Copies are not available from HUD).

Final

Upper Ashbury Rehabilitation Assistance Program, San Francisco County, Calif., January 19: Proposed is the application of Community Development Block Grant funds to the Upper Ashbury area of San Francisco, containing approximately 3,700 dwelling units and 8,700 persons. The San Francisco Rehabilitation Assistance Program is a financial assistance and code enforcement program, designed to carry out the City's policy of residential rehabilitation and neighborhood conservation. The impacts of the proposed Upper Ashbury program are evaluated in this EIS in light of the controversy in the proposed area regarding the social and economic impacts associated thereto. Comments made by: HEW, HUD, EPA, State and local agencies, concerned citizens. (ELR Order No. 70032.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF RECLAMATION

Draft

Coronado Project, Maricopa County, Ariz., January 17: Proposed is a joint project, involving the Department of Interior and the Department of Agriculture, associated with the Salt River Project's proposed electrical generating plant at St. John's, Arizona. The facilities are intended to meet the future needs of Maricopa County and of the "Eastern Mining Area." The generating plant, wellfields, pipelines, limestone source, and railroad would occupy 3,516 acres of land and

the transmission line would occupy 526 acres. Negative effects include the impact of access roads, tower sites and staging areas on soils, forage, vegetation, and archeological resources. (ELR Order No. 70064.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400-7th Street, S.W., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Ocean Boulevard, Morris-Ocean Ave., Monmouth County, N.J., January 19: Proposed is the construction on new alignment of an urban highway, Ocean Boulevard, from its present terminus at Morris Avenue north to Ocean Avenue (N.J. Route 36) in the City of Long Branch, New Jersey. The total project length is approximately 9000 feet or 1.6 miles. The minimum right-of-way of 110 feet will provide for a land-service facility with two travel lanes plus paved shoulders in each direction separated by a narrow grassed mall. Adverse effects include the displacement of 67 to 254 individuals and 8 to 12 businesses. A preliminary 4(f) discussion is also included. (Region I). (ELR Order No. 70073)

Relocated U.S. 32, Dallas to Hickory, Lincoln, Catawba, and Gaston Counties, N.C., January 18: Proposed is the construction of a 4-lane divided highway on new location, connecting the existing improved section of U.S. 321 at Dallas, to the existing (new) interchange with I-40 at Brookford, just south of Hickory, North Carolina. New corridor locations under consideration vary from 30 to 32 miles in length. The new roadway will generally parallel and replace existing U.S. 231, which extends about 37 miles between Dallas and Brookford. Adverse impacts will result from taking homes, businesses, farms, woodlands, and other natural areas for right-of-way. (Region 4). (ELR Order No. 70065.)

Final

Street Improvements (U.S. 122, U.S. 7), Chicago, Cook County, Ill., January 18: This statement concerns the following roadway improvements in Chicago, Illinois: a 4,600 ft. segment of Columbus Drive; a 3000 ft. segment of Randolph Street between N. Michigan Avenue and N. Lake Shore Drive; a 5,220 ft. segment of Nort Lake Shore Drive (US 122); and Wacker Drive Extension (US 7). The project would result in increased air, water, and noise pollution, and the taking of portions of Grant Park, Navy Pier Park, and the Lakefront Promenade, and the Monroe Street Yachting Harbor. A 4(f) statement is included. Comments made by: EPA, DOT, State and local agencies, concerned citizens. (ELR Order No. 70071.)

Route 36, St. Joseph and Missouri River, Kansas County, Missouri, January 19: The proposed action is the acquisition of limited access right-of-way from the Missouri River to 17th Street in St. Joseph, grading, multilane paving, interchanges, and a six lane bridge over the Missour River from a point in Buchannan County, Kansas to 17th Street in St. Joseph. Total project length is 1.5 miles. Adverse impacts include the relocation of 77 families and 22 businesses, and the reassignment of approximately 30 acres of industrial, commercial and residential land to a transportation corridor. Comments made by: HUD, DOI, EPA, HEW, USDA, DOT, COE, State and local agencies, concerned citizens. (ELR Order No. 70079.)

DAVID W. TUNDERMAN,
Acting General Counsel.

[FR Doc.77-2793 Filed 1-27-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

SCIENTIFIC ADVISORY BOARD OF THE ARMED FORCES INSTITUTE OF PATHOLOGY

Establishment, Organization and Functions

In accordance with the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Scientific Advisory Board of the Armed Forces Institute of Pathology has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. The Office of Management and Budget has also reviewed the justification for this Advisory Committee and concurs with its reestablishment.

The nature and purpose of the Scientific Advisory Board of the Armed Forces Institute of Pathology is to serve in the public interest as a scientific advisory body to The Director, Armed Forces Institute of Pathology, to provide him and his staff with scientific and professional advice and guidance in matters pertaining to operational programs, policies and procedures of the Armed Forces Institute of Pathology central laboratory of pathology for the Department of Defense and other federal agencies with responsibilities for consultation, education and research in pathology.

Specifically, the advisory board will serve in the public interest by advising The Director, Armed Forces Institute of Pathology, on matters pertaining to:

(a) The character, scope, and adequacy of educational and experimental, statistical, and morphological research programs undertaken by the Institute, to include their correlation with other medical specialties.

(b) The correlation of education and research conducted in the Institute with that of other institutions to avoid unnecessary duplication and to facilitate the work of the Institute.

(c) The utilization for education and research purposes of the vast accumulation of pathologic material in the Institute to include their use in the Medical Museum.

(d) The character, scope, and adequacy of the technical and professional training programs of the Institute for Medical Department personnel and others.

(e) The use of new techniques, equipment and scientific apparatus in consultation, education and research.

(f) The character, size and adequacy of consultation services to include the development and evaluation of new pathologic tests and diagnostic procedures.

(g) The continuation of review for quality control of pathologic diagnoses for the medical services.

(h) Such other matters as are deemed of benefit to the Institute.

In view of the foregoing, the reestablishment of the Scientific Advisory Board of the Armed Forces Institute of Pathology is in the public interest. There is no existing committee, agency, or activity within the Federal Government that can perform the functions of the advisory board.

In order to assure balanced membership, the Board shall be composed of not more than 20 members, 16 selected from the civilian community on the basis of their national or international prominence in medicine and science allied to the functions of the Institute, and one representing the Professional Directorate of each military medical service and the Veterans Administration. No non-Federal civilian member of the Board shall be eligible to vote on or participate in any discussion or decision of the Scientific Advisory Board affecting research projects of their own or research projects of the organization or institution which employs them. Each civilian member will be appointed upon the advice of the Director, Armed Forces Institute of Pathology, and the concurrence of the Institute's Board of Governors by the Secretary of Defense or his designee. The basic term of office of the civilian members shall be two years. No civilian member may serve more than two terms in succession. Terms shall be staggered to provide a rotating membership. Federal members shall be appointed by and serve at the discretion of their respective agencies.

The Board shall report to the Director, Armed Forces Institute of Pathology. The Executive Officer, Armed Forces Institute of Pathology, who is a full-time salaried Federal Officer, shall serve as the agency representative and as Executive Secretary of the Board with full authority to adjourn any meeting not considered to be in the public interest.

The Scientific Advisory Board of the Armed Forces Institute of Pathology shall meet at least once annually for a two-day period. The Board will operate in accordance with the provisions of Pub. L. 92-463, Executive Order 11769, and implementing OMB, DOD and DA directives for Federal Advisory Committees.

The Scientific Advisory Board of the Armed Forces Institute of Pathology will terminate one year from this date unless rechartered for an additional period prior to termination.

Dated: January 25, 1977.

MAURICE W. ROCHE,
Director for Correspondence and Directives, OASD (Comptroller).

[FR Doc.77-2785 Filed 1-27-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ERDA ADVISORY COMMITTEES

Renewal

JANUARY 24, 1977.

Notice is hereby given that the following ERDA Advisory Committees have been renewed for a 2-year period, i.e., beginning from the date that copies of the charters have been filed with the

standing committees on Congress and the Library of Congress (approximately February 1, 1977) and ending February 1, 1979:

Advisory Committee on Geothermal Energy; Committee of Senior Reviewers; High Energy Physics Advisory Panel; Historical Advisory Committee.

ERDA's Procurement Policy Advisory Committee has been renewed for a 1-year period, i.e., beginning from the date that copies of the charter have been filed with the standing committees of Congress and the Library of Congress (approximately February 1, 1977) and ending February 1, 1978.

Renewal of these Committees is necessary and in the public interest. The Committees will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), ERDA policy and procedures, OMB Circular No. A-63 (Revised), and other directives and instructions issued in implementation of that Act.

This determination follows consultation with the Office of Management and Budget pursuant to the relevant sections of the Federal Advisory Committee Act and OMB Circular No. A-63 (Revised).

ROBERT F. ALLNUTT,
Acting Advisory Committee Management Officer.

[FR Doc.77-2814 Filed 1-27-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE ADVISORY BOARD, TECHNOLOGY ASSESSMENT AND POLLUTION CONTROL ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Technology Assessment and Pollution Control Advisory Committee will be held beginning at 9 a.m., February 18, 1977, in room 3305, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, D.C.

This meeting is a regularly scheduled meeting of the Committee. The Committee will draft a report regarding its assessment of the quality of EPA's research and development activities related to pollution control technology. Further, the Committee will be briefed on relevant activities of the Science Advisory Board and will discuss members items of interest.

The meeting is open to the public. Any member of the public wishing to attend or submit a paper should contact Lloyd T. Taylor, Executive Secretary, Technology Assessment and Pollution Control Advisory Committee, (703) 557-7720, by c.o.b. February 11, 1977.

THOMAS D. BATH,
Staff Director, Science Advisory Board.

[FR Doc.77-2747 Filed 1-27-77;8:45 am]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

Open Meeting

In accordance with Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given of an open meeting of the Environmental Pollutant Movement and Transformation Advisory Committee of the Science Advisory Board of the U.S. Environmental Protection Agency. The meeting is scheduled for February 14, 15 and 16, 1977, and will be held at the Conference Room 1112A of Crystal Mall Building No. 2 (1921 Jefferson Davis Highway, Arlington, Virginia). Each day's session will begin at 9 a.m.

For the February 14, 1977 session, the topics are: current activities of the Science Advisory Board, and programs of the Robert S. Kerr Research Laboratory dealing with groundwater pollution. For the February 15, 1977 session, topics include presentations of the activities of selected researchers sponsored by the U.S. Environmental Protection Agency who are presently engaged in modeling efforts dealing with the movement and environmental fate of selected types of pollutants. For the February 16, 1977 session, the topic is a discussion of how the Committee should write its report of findings on the quality of research programs observed and visited within the Agency's laboratories.

Persons wishing to attend the meeting should contact the Science Advisory Board Secretariat. The address is: U.S. E.P.A., Science Advisory Board (A-101), Washington, D.C. 20460. The telephone number is (703) 557-7710. Please ask for Miss Carolyn Osborne. In order to plan for the meeting, it is requested that persons intending to attend the meeting notify the Secretariat by close of business (c.o.b.) on February 10, 1977.

THOMAS D. BATH,
Staff Director, Science Advisory Board.

JANUARY 21, 1977.

ENVIRONMENTAL POLLUTANT MOVEMENT AND TRANSFORMATION ADVISORY COMMITTEE

PRELIMINARY AGENDA
4TH MEETING

February 14, 1977

9:00 a.m.—Welcome and opening remarks, Dr. Montroll.
9:20 a.m.—Discussion of SAB activities from January 4-5, 1977, executive committee meeting, Dr. Wei.
10:00 a.m.—Advisory statement on post-doctoral fellows, Dr. Lovine.
10:45 a.m.—Break.
11:00 a.m.—Discussion of EPATAC transmittal to ORD on sulfates research plan, Dr. Montroll.
12:30 p.m.—Lunch.
2:00 p.m.—Opening remarks and planning for next meeting, Dr. Montroll.
2:30 p.m.—Groundwater research programs of the Robert S. Kerr research center (Ada, Oklahoma), Dr. Riordan and associates.
4:30 p.m.—Recess.

February 15, 1977

9:00 a.m.—Opening remarks, Dr. Montroll.
9:30 a.m.—Modeling discussions with grantees, Invited guests.
12:00 p.m.—Lunch.
1:30 p.m.—Modeling discussions with grantees, Invited guests.
4:30 p.m.—Recess.

February 16, 1977

9:00 a.m.—Opening remarks, Dr. Montroll.
9:15 a.m.—Discussion of report writing activities on the quality of ORD laboratories: visits to laboratories, other presentations and discussions, Dr. Montroll.
11:00 a.m.—Future committee activities and items of member interest, Dr. Montroll.
12:30 p.m.—Adjourn.

[FR Doc.77-2748 Filed 1-27-77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-8, AOR 1977-3]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-3 has been made public at the Commission. Copies of AOR 1977-3 were made available on January 21, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A description of the request recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-3: Whether office account may be established by Senator seeking re-election in 1978 who holds official Senate leadership position and may be used to pay expenses incident to his duties as a "Senate leader only;" whether office account funds may be used to pay the Senate leader's costs of appearing at "political functions" involving other Senators "up for election."—Requested by Senator Ted Stevens, United States Senate, Washington, D.C.

Dated: January 25, 1977.

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

[FR Doc.77-2875 Filed 1-27-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 17 through December 24, 1976

Notice is hereby given that during the week of December 17 through December 24, 1976, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments of the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

List of cases received by the Office of Exceptions and Appeals, Dec. 17 through Dec. 24, 1976

Date	Name and location of applicant	Case No.	Type of submission
Dec. 17, 1976	David Crow, Shreveport, La. (If granted: FEA's remedial order would be rescinded and David Crow would not be required to refund overcharges made on its sales of crude oil to Sohio.)	FRA-1092 FES-1092	Appeal of remedial order; stay requested.
Do	Earl F. Wakefield, Inc., Wichita, Kans. (If granted: FEA's Dec. 8, 1976, remedial order would be rescinded and Earl F. Wakefield would not be required to refund overcharges made on its sales of crude oil to Citgo and Apco.)	FRA-1093 FES-1093	Do.
Dec. 20, 1976	Al Jones Oil Corp./General Oil Distributors, Inc., Jamaica, N.Y. (If granted: Al Jones Oil Corp. would receive an increase in its base period use of motor gasoline and General Oil Distributors, Inc., would be assigned as its base period supplier.)	FEE-3528	Exception to increase base period use (sec. 211.13).
Do	Algonquin SNG, Inc., Washington, D.C. (If granted: Algonquin SNG, Inc., would receive a stay of the requirements of the FEA's Mar. 22, 1976, decision and order issued to the Petrochemical Energy Group.)	FES-0048	Stay request.
Do	EDG, Inc., Los Angeles, Calif. (If granted: EDG, Inc., would receive a stay of the requirement of the FEA's Nov. 5, 1976, decision and order to purchase $1,029,310 additional entitlements during the period November 1976 through October 1977 pending a final determination of its appeal of that order.)	FES-1083	Request for stay of decision and order in Beacon Oil Co., et al., 4 FEA par. 87,021 (Nov. 5, 1976).
Do	Exxon Co., U.S.A., Washington, D.C. (If granted: The FEA's Nov. 17, 1976, decision and order would be rescinded and Louisiana Land & Exploration Co.'s crude oil supplier/purchase relationship with Exxon Co., U.S.A. would be reinstated.)	FXA-1096	Appeal of decision and order in Louisiana Land & Exploration Co., 4 FEA par. .... (Nov. 17, 1976).
Do	Independent Gasoline Marketers Council; Society of Independent Gasoline Marketers of America, Washington, D.C. (If granted: The members of the Independent Gasoline Marketers Council, the Society of Independent Gasoline Marketers of America and other independent retailers of motor gasoline which purchase product from more than 1 supplier and sell in more than 1 marketing area would be recognized by the FEA as a proper class for the purposes of granting exception relief to permit the retroactive application of the separate inventories amendment.)	FXA-1095	Appeal of decision and order in Retroactive Application of the Separate Inventories Amendment, 4 FEA par. 83,099 (Sept. 24, 1976).
Do	Laketon Asphalt Refining, Inc., Evansville, Ind. (If granted: Laketon Asphalt Refining, Inc., would receive an exception from the old oil entitlements program.)	FEE-3525	Exception from oil entitlements program (sec. 211.67).
Do	Mobile Oil Corp., New York, N.Y. (If granted: The FEA's Nov. 5, 1976, order would be rescinded and Mobile Oil Corp. would continue to be supplied motor gasoline by the Gulf Oil Corp.)	FEA-1094 FES-1094	Appeal of FEA's Nov. 5, 1976, order; stay requested.
Do	F. H. Rhees, Tulsa, Okla. (If granted: Crude oil produced by Rhees from wells located in Nowata County, Okla., would be sold at upper tier ceiling prices.)	FEE-3526	Price exception (sec. 212.74).
Do	Rickelson Oil & Gas Co., Tulsa, Okla. (If granted: Crude oil produced from Rickelson's Vanbuskirk lease located in Seminole County, Okla., would be sold at upper tier ceiling prices.)	FEE-3527	Do.
Do	Texaco, Inc., Houston, Tex. (If granted: Texaco, Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005 per gallon for natural gas liquid products produced at the following natural gas plants: Enville, Hitchcock, Kittie, Mermentau, and Ozona.)	FEE-3529— FEE-3533	Price exception (sec. 212.165).
Do	Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. (If granted: Warrior's entitlement purchase obligation for the month December 1976 representing crude oil receipts and runs to stills for October 1976 would be partially stayed.)	FEX-0105	Supplemental order.

Date	Name and location of applicant	Case No.	Type of submission
Do.	Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. (If granted: Warrior Asphalt would receive an extension of the entitlement relief granted in FEA's June 17, 1976, decision and order.)	FEX-0100	Do.
Dec. 21, 1976	Batzell, Nunn & Bode, Washington, D.C. (If granted: The FEA's Dec. 2, 1976, information request denial would be rescinded and Batzell, Nunn & Bode would receive access to FEA material regarding FEA's proposal to exempt naphthas, gas oil and other products from the mandatory petroleum allocation and price regulation.)	FFA-1005	Appeal of FEA's information request denial.
Do.	Bices Oil Co., Bowman, N. Dak. (If granted: The FEA's Nov. 8, 1976, decision and order would be rescinded and Bices Oil Co. would be permitted to retain the revenues which it realized during the period Nov. 1, 1973, through Sept. 16, 1974 from charging prices for propane which exceeded maximum levels permitted by sec. 212.93.)	FEA-1009	Appeal of FEA region VIII's decision and order dated Nov. 8, 1976.
Do.	Bices Oil Co., Bowman, N. Dak. (If granted: Bices Oil Co. would receive a stay of the requirements of the FEA's Dec. 6, 1976, remedial order and would not be required to refund overcharges made in sales of propane during the period Nov. 1, 1973, through Sept. 30, 1974.)	FEA-1010	Request for stay of remedial order dated Dec. 6, 1976.
Do.	Memphis Aero Corp., Washington, D.C. (If granted: Memphis Aero Corp. would be permitted to increase its selling price for aviation fuel above the maximum allowable price levels computed pursuant to sec. 212.93.)	FEE-3030	Price exception (sec. 212.93).
Do.	Petrochemical Energy Group, Washington, D.C. (If granted: The FEA's Oct. 18, 1976, decision and order issued to Brooklyn Union Gas Co. would be rescinded and Brooklyn Union Gas would not be assigned a base period use of 703,000 gal of butane for Btu entitlement.)	FFA-1006	Appeal of FEA's Oct. 18, 1976, decision and order issued to Brooklyn Union Gas Co.
Do.	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: Standard Oil Co. (Indiana) would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.035 per gallon for natural gas liquid products produced at the following natural gas plants: Elmwood, Lake Boeuf, Monaban, South Thornwell and TSMA.)	FEE-3021 - FEE-3023	Price exception (sec. 212.103).
Do.	Varibus Corp., Beaumont, Tex., (If granted: Varibus Corp. would receive a stay of the requirements of the FEA's Sept. 20, 1976, remedial order to refund to Thomas P. Reidy & Rifle Petroleum overcharges by Varibus in sales of No. 2 fuel oil.)	FEA-1004	Request for stay of remedial order dated Sept. 20, 1976.
Dec. 22, 1976.	Caldo Oil Co., Curtesy Oil Co., Ramco Oil Co., Rinehart Oil Co., San Francisco, Calif. (If granted: Caldo Oil Co., Curtesy Oil Co., Ramco Oil Co., and Rinehart Oil Co. would receive a stay of the provisions of the FEA's Nov. 5, 1976, decision and order issued to Gulf Oil Corp. pending a final determination of the appeal of that order, and thereby continue to receive their base period use of petroleum products from Gulf.)	FEB-1051 - FEB-1057	Request for stay of decision and order dated Nov. 5, 1976, issued to Gulf Oil Corp.
Do.	Major Oil Co., Miles Oil Co., and Olympian Oil Co., San Francisco, Calif. (If granted: Major Oil Co., Miles Oil Co., and Olympian Oil Co. would receive a stay of the provisions of the FEA's Nov. 5, 1976, decision and order issued to Gulf Oil Corp. pending a final determination of their appeal of that order, and thereby continue to receive their base period use of petroleum products from Gulf.)	FEB-1058 FEB-1059 FEB-1060	Do.
Do.	Minnesota Gas Co., Minneapolis, Minn. (If granted: Minnesota Gas Co. would receive an exception to sec. 212.92 and sec. 212.93 for purposes of computing its increased product costs and its selling price of propane.)	FEE-3031	Price exception (sec. 212.93).
Do.	OKC Corp., Washington, D.C. (If granted: The FEA's Nov. 22, 1976, decision and order would be rescinded and OKC Corp. would be relieved of any obligation to purchase entitlements with respect to its crude oil runs to stills and old oil receipts for the months of April through September 1976.)	FEA-1011	Appeal of decision and order in OKC Corp., 4 FEA par. ____ (Nov. 22, 1976).
Do.	Skelly Oil Co., Tulsa, Okla. (If granted: The FEA's Dec. 12, 1976, remedial order would be rescinded and Skelly Oil Co. would not be required to determine its imputed May 15, 1973, selling price for unleaded gasoline in accordance with 10 CFR 212.112(b)(1).)	FEA-1013	Appeal of remedial order dated Dec. 12, 1976.
Do.	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: The FEA's Oct. 1, 1976, and Nov. 12, 1976, decisions would be modified to reflect increased 3d quarter nonproduct costs for the following natural gas plants: Luby, Old Ocean, Burnell, Midland, and Peoria.)	FMR-0073 FMR-0077	Request for modification of decisions and orders in Standard Oil Co. (Indiana), 4 FEA par. 83,134 (Oct. 1, 1976); Standard Oil Co. (Indiana), 4 FEA par. ____ Nov. 12, 1976).
Do.	Sun Co., Inc., Washington, D.C. (If granted: Portions of a document as to which a decision was reserved in the order issued to Sun pursuant to the Freedom of Information Act on Nov. 19, 1976, would be released.)	FEX-0107	Supplemental order to decision in Sun Co. Inc., 4 FEA par. ____ (Nov. 19, 1976).

Date	Name and location of applicant	Case No.	Type of submission
Do	James Taylor Wilson, Leroy, Ala. (If granted: James Taylor Wilson would be assigned a new, lower priced supplier of petroleum products to replace its base period supplier, Bedwell Oil Co.)	FEE-3540	Exception to change base period supplier (sec. 211.9).
Dec. 23, 1976	Southwestern Refining Co., Inc., Salt Lake City, Utah. (If granted: Southwestern Refining Co., Inc., would receive a stay of the requirements of the entitlement notice issued Dec. 22, 1976, that it purchase 1,213 entitlements by Dec. 31, 1976.)	FES-0051	Stay request.
Do	UCO Oil Co., Whittier, Calif. (If granted: UCO Oil Co. would receive an extension of the exception relief granted in the FEA's Oct. 15, 1976, decision and order and would be assigned new, lower priced suppliers of motor gasoline on the basis that it is continuing to experience a serious hardship.)	FXE-3542	Extension of relief granted in UCO Oil Co., 4 FEA par. 80,155 (Oct. 15, 1976).
Do	Union Oil Co. of California, Los Angeles, Calif. (If granted: The FEA's Dec. 6, 1976, decision and order would be modified to (i) include all California heavy-high sulfur crude oil; (ii) remove the requirement that Union pay maximum ceiling prices on all crude oils used in computing the measure of relief; and (iii) make the order effective 3 mo from the date on which it is modified on appeal.)	FXA-1102	Appeal of decision and order in Union Oil Co. of California, 4 FEA par. ---- (Dec. 6, 1976).

[FR Doc.77-2570 Filed 1-21-77;4:24 pm]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 24 through December 31, 1976

Notice is hereby given that during the week of December 17 through December 24, 1976, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments of the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Dated: January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

List of cases received by the Office of Exceptions and Appeals, Dec. 24 through Dec. 31, 1976

Date	Name and location of applicant	Case No.	Type of submission
Dec. 27, 1976	City of Long Beach, Long Beach, Calif. (If granted: FEA's Dec. 3, 1976, decision and order would be modified to increase the relief granted to the fault block II-unit working interest owners.)	FXA-1105	Appeal of FEA's decision and order in City of Long Beach, 4 FEA par. ---- (Dec. 3, 1976).
Do	Lee Brooks Oil, Inc., Wichita, Kans. (If granted: FEA's Nov. 24, 1976, remedial order would be rescinded.)	FRA-1104 FES-1104	Appeal of FEA's remedial order; stay requested.
Do	Midland Cooperatives, Inc., Washington, D.C. (If granted: FEA's Nov. 5, 1976, decision and order would be rescinded and Midland Cooperatives would not be required to purchase $1,057,841 additional entitlements during the period November 1976 through October 1977.)	FXA-1103	Appeal of FEA's decision and order in Midland Cooperatives, Inc., 4 FEA par. ---- (Nov. 5, 1976).
Do	Ozona Gas processing plant, Dallas, Tex. (If granted: Ozona Gas processing plant would be permitted to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005 per gallon.)	FEE-3544	Price exception (sec. 212.165).
Do	R. V. Whitmer Thermogas Co., Akron, Ohio. (If granted: R. V. Whitmer Thermogas Co. would not be required to refund overcharges in propane sales and would be permitted to establish its base price as of July 30, 1973.)	FEE-3543	Price exception (sec. 212.93).
Dec. 28, 1976	Boswell Oil Co. of Louisiana, Houston, Tex. (If granted: Boswell Oil Co. would be awarded entitlements on the basis of imputed crude oil runs to stills during the 2 mo prior to the initiation of operations at its St. John Parish refinery.)	FEE-3548	Allocation exception (sec. 211.67).
Do	Cities Service Co., Tulsa, Okla. (If granted: Cities Service Co. would replace Peacock Oil Co. as base period supplier for a retail outlet located at 501 West 31st St., Chicago, Ill.)	FEE-3546	Exception to change supplier (sec. 211.9.)
Do	Getty Oil Co., New York, N.Y. (If granted: FEA's July 21, 1976, decision and order would be rescinded and Getty Oil Co., Getty Eastern and Skelly would be considered a single firm.)	FMR-0078	Rescission of FEA's decision and order in Getty Oil Co., 2 FEA par. 80,046 (July 21, 1975).
Do	Good Hope Industries, Inc., Springfield, Mass. (If granted: The FEA would review the entitlements exception relief granted to Good Hope Industries, Inc., during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0108	Review of entitlements exception relief (supplemental order).
Do	Pryor Interprises, Inc., Griffin, Ga. (If granted: Pryor Interprises, Inc., would be assigned a new, lower priced supplier of motor gasoline to replace its base period supplier, Triton, Inc.)	FEE-3547	Exception to change suppliers (sec. 211.9).

Date	Name and location of applicant	Case No.	Type of submission
Dec. 29, 1976	Earl W. Sander, Emporia, Kans. (If granted: FEA's Nov. 4, 1976, remedial order would be rescinded and the Babinger-Perrier, Possillon, and Jones-Rathke lease would be classified as a stripper well property retroactive to November 1973.)	FRA-1106 FES-1106	Appeal of FEA's remedial order; stay requested.
Do	Mobil Oil Corp., New York, N.Y. (If granted: Mobil Oil Corp. would receive a temporary stay of FEA's Nov. 5, 1976, order and would not be required to fulfill a portion of Gulf Oil Corp.'s supply obligations in the northern California, northern Nevada, Oregon, and Washington areas.)	FST-0024	Request for temporary stay of FEA's Nov. 5, 1976 order.
Do	OKC Corp., Washington, D.C. (If granted: The FEA would review the entitlements exception relief granted to OKC Corp. during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0109	Review of entitlements exception relief (supplemental order).
Dec. 28, 1976	Phillips Petroleum Co., Bartlesville, Okla. (If granted: FEA's Dec. 3, 1976, special report order would be rescinded and Phillips Petroleum Corp. would not be required to file a special report with respect to its exchanges involving refined petroleum products.)	FSG-0033	Request for special redress.
Dec. 29, 1976	Tenneco Oil Co., Houston, Tex. (If granted: Tenneco Oil Co. would receive a temporary stay of the refund which the firm is required to make to the West Coast Oil Co. pending judicial review.)	FST-0023	Request for a temporary stay of FEA's decision and order in Tenneco Oil Co., 3 FEA par. ..... (Dec. 21, 1976).
Dec. 30, 1976	Amtane, Inc. (Burmah LP-Gas, Inc.), Tulsa, Okla. (If granted: The FEA's Dec. 3, 1976, decision and order issued to Small's LP Gas Co. would be rescinded.)	FXA-1107	Appeal of FEA's decision and order in Small's LP Gas Co., 4 FEA par. ..... (Dec. 3, 1976).
Do	Flying Tiger Line, Inc., Los Angeles, Calif. (If granted: Flying Tiger Line, Inc., would receive a temporary stay of FEA's Dec. 16, 1976, order and Texaco would supply the firm with kerosene-base aviation turbine fuel.)	FST-0025	Temporary stay of FEA's Dec. 16, 1976, order.
Do	Flying Tiger Line, Inc., Los Angeles, Calif. (If granted: FEA's Dec. 16, 1976, order would be rescinded and Flying Tiger Lines would be supplied kerosene-base aviation turbine fuel for its base period use.)	FEA-1109 FES-1109	Appeal of FEA's Dec. 16, 1976, order; stay requested.
Do	Mid-Michigan Truck Service, Inc., Grand Rapids, Mich. (If granted: Mid-Michigan Truck Service, Inc., would be assigned a new, lower priced supplier of motor gasoline on the basis that it is continuing to experience a serious hardship.)	FXE-3671	Extension of relief granted in Mid-Michigan Truck Service, Inc., 4 FEA par. 87,015 (Oct. 6, 1976).
Do	Shell Oil Co., Houston, Tex. (If granted: Shell Oil Co. would be permitted to retroactively compute increased nonproduct cost recoveries under a proportionate recovery method.)	FEE-3545	Price exception (sec. 212.83).

[FR Doc.77-2571 Filed 1-21-77;4:26 pm]

FEDERAL ENERGY ADMINISTRATION

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 22 Through November 26, 1976

Notice is hereby given that during the week of November 22 through November 26, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Atlantic Richfield Co., Los Angeles, Calif.; FEA-0863; Refined Petroleum Products

The Atlantic Richfield Company (Arco) appealed from a Decision and Order issued to it and the C F Petroleum Company (CFP) in which the FEA considered requests by those firms for various types of administrative relief in connection with the proposed acquisition by CFP of a refinery owned by Arco. *Atlantic Richfield Co.*, 3 FEA Par. 83,177 (May 14, 1976). Arco limited the scope of its Appeal to a challenge to the determination reached in the May 14 Decision that the firm should not be permitted to recoup the costs which it incurs under a proposed crude oil conversion agreement with CFP as either increased product or nonproduct costs. In considering Arco's Appeal, the FEA observed that these costs constitute processing fees which are not included in the categories of increased costs specified in 10 CFR 212.83 which a refiner may recover in the form of higher selling prices. The FEA therefore rejected Arco's claim that the FEA Price Regulations permit the firm to recover the crude oil processing fee which it pays to CFP. Contrary to Arco's contention that the Emergency Petroleum Allocation Act of 1973, as amended, requires the FEA to permit the recovery of processing fees, the FEA found that the statute only imposes on the FEA an obligation to permit the recovery of increased product costs. With respect to Arco's claim that the FEA erred in failing to find that Arco would experience a gross inequity if it were not permitted to recover the costs incurred under its processing agreement, the FEA generally noted that processing agreements are common among refiners and that a rulemaking proceeding rather than the exceptions process is the appropriate forum in which to present a request for administrative relief which would apply to alleged inequities being experienced by a broad sector of the petroleum industry. Nevertheless, the FEA determined that the additional information submitted by Arco on Appeal materially distinguishes Arco's situation in this case from the situation of other refiners which are parties to processing agreements. In this regard, the FEA found that the processing agreement is an integral part of CFP's acquisition of the Arco refinery and that, in the absence of the agreement, it is uncertain whether CFP would be able to operate the refinery in an economically efficient manner. Furthermore, on the basis of the material submitted by Arco, the FEA determined that, in the absence of exception relief, the refiners' price rule would substantially impede CFP's acquisition of the refinery. Moreover, in the May 14 Decision the FEA had concluded that since the acquisition by CFP of the Arco refinery would further significant national energy objectives, exception relief was appropriate to facilitate the acquisition. The Arco Appeal was therefore granted in part and exception relief was approved which permits Arco rather than CFP to recover the increased non-product costs, as defined in Section 212.83, which are incurred by CFP in producing the refined products delivered to Arco under the processing agreement.

Exxon Co., U.S.A.; Houston, Texas; FEA-0540, FEA-0570, FEA-0917, FEA-0938, FEA-0953, FEA-0972, FEA-1012; Crude oil

Exxon Company, U.S.A. (Exxon) appealed from the Entitlement Notices which the FEA issued for the months of February through July 1976. In the Appeals, Exxon alleged that the total quantity of old oil which was actually produced in the United States during the period November 1974 through July 1976 exceeded the old oil receipts stated in the Entitlement Notices by approximately 93.2 million barrels. Exxon contended that this apparent disparity distorted the adjusted national old oil supply ratio and thereby increased the number of entitlements which Exxon was required to purchase. In analyzing Exxon's assertion, the FEA noted that, on February 1, 1976, amendments to the crude oil price regulations had been adopted which were intended to result in a weighted average first sale price for all domestic crude oil during February 1976 which would comply with the $7.66 per barrel limitation established for that month by Section 401 of the Energy Policy and Conservation Act (EPCA). In order to monitor the first sale price of domestic crude oil, the FEA had, commencing with the month of February 1976, implemented a new monthly reporting system for "first purchasers" which receive a first sale certification from the producers of domestic crude oil. The FEA observed that as a result of this new reporting system, it now has precise data as to the amount of old oil which was actually produced in the United States in each month and is consequently able to verify the old oil receipts which refiners reported for purposes of the Entitlements Program. In considering the Exxon Appeals, the FEA found that the data which has been collected from the First Purchaser System for the period from February through July 1976 demonstrates conclusively that the amount of old oil produced in the United States during that period was approximately equal to the old oil receipts specified in the Entitlement Notices which the FEA published during the months of April through September 1976. The FEA further determined that any variance between the amount of old oil reported in the different regulatory programs is attributable to the existence of reporting errors, compliance violations and the correction process of the Entitlements Program. The FEA also determined that Exxon has substantially overestimated the amount of old oil which was produced during the period since the inception of the Entitlements Program. In view of the various FEA actions which have already been commenced to collect data reported in the operation of the Entitlements Program and the fact that the data which has been collected tends to verify the accuracy of the figures used for purposes of the Entitlements Program, the FEA concluded that Exxon failed to establish the existence of any prejudicial error of fact that is not already in the process of being corrected. The Appeals which Exxon filed were accordingly denied.

Kerr-McGee Corp.; Oklahoma City, Okla.; FEA–0882; Refined Petroleum Products

The Kerr-McGee Corporation (Kerr-McGee) filed an Appeal from a Decision and Order issued to it by the Federal Energy Administration. *Kerr-McGee Corp.*, 3 FEA Par. 83,179 (May 7, 1976). In the prior determination, the FEA granted retroactive exception relief from the provisions of 10 CFR 212.83(c)(2) for the period June 28, 1974 through January 31, 1976 which permitted Kerr-McGee to allocate its increased crude oil costs to refined products in the proportion that the products were refined by the firm rather than on the basis of the volumes sold. The FEA denied the Kerr-McGee exception request in all other respects. The present Appeal, if granted, would reverse the previous determination and result in the approval of exception relief which permits the firm to: (i) calculate increased costs and determine maximum allowable prices as though each of its refining subsidiaries were a separate firm; (ii) allocate increased product costs on the basis of refinery yield for the period August 1973 through June 27, 1974; and (iii) apply prospectively and retroactively its increased costs to the selling prices it charged to its various classes of purchaser without regard to the provisions of Section 212.83(c)(1) and Section 212.83(h) (the equal application rule). With respect to the requirement of consolidated pricing on a firm-wide basis, the FEA found no error in its previous conclusion that Kerr-McGee and its subsidiaries lacked the "completely separate and distinct operations" which are necessary for the approval of separate pricing under FEA precedents. *See Getty Oil Co. (Eastern Operations), Inc.; Skelly Oil Co.*, 2 FEA Par. 83,041 (February 11, 1975).

With respect to the Kerr-McGee request for additional retroactive exception relief from the provisions governing the allocation of increased crude oil costs, the FEA noted that the May 7 Decision attempted to arrive at an appropriate balance of a number of equitable considerations in arriving at the conclusion that exception relief should be approved for the period June 28, 1974 through January 31, 1976. Since Kerr-McGee received significant benefits from the prior Decision, the FEA found no merit to Kerr-McGee's position that the denial of relief for the period prior to June 28, 1974 was arbitrary. The FEA also rejected Kerr-McGee's contention that the prior application to it of the equal application rule results in a penalty to the firm. In this connection, the FEA noted that even though Kerr-McGee may not have recovered revenues in excess of its total cost increases, it could nevertheless have overcharged some of its customers by applying unequal increments of costs in determining its selling prices. The FEA found that the mere fact that overcharges to some customers may have been offset by undercharges to other customers did not provide grounds for granting an exception which would relieve Kerr-McGee of all liability but fail to provide redress to those customers whom it overcharged.

In response to Kerr-McGee's contention that the FEA had departed from its precedents by denying it retroactive exception relief from the equal application rule, the FEA reiterated the requirement that a firm seeking retroactive relief must first make a preliminary showing of serious hardship or gross inequity before the issue of retroactivity is even addressed, and Kerr-McGee had not made such a showing. The FEA also found no merit to Kerr-McGee's argument that precedential value should be accorded to a consent order which partially relieved it of liability for violating the equal application rule, since consent orders issued in compliance proceedings are governed by different criteria from those which the FEA employs in resolving adjudicatory cases in the exceptions process. In addition, the FEA determined that the firm's projection that it might incur an operating loss during its present fiscal year if it were required to make refunds was speculative at the present time and provided no basis for retroactive exception relief inasmuch as the FEA Office of Compliance had not made any finding as to the precise amount of overcharges or the appropriate method of restitution. Since Kerr-McGee had failed to demonstrate that the May 7 Decision was erroneous in fact or law or was arbitrary or capricious, its Appeal was denied.

Luke Bros., Inc.; Bryan County, Okla.; FEA–1004; Propane

Luke Brothers, Inc. (Luke) appealed from a Remedial Order in which the Federal Energy Administration, Region VI, found that subsequent to November 1, 1973 Luke had been selling propane at prices which exceeded the maximum price levels permitted by 6 CFR 150.359 and 10 CFR 212.93. The Remedial Order directed Luke to immediately reduce the prices which it charges for propane to lawful levels. In its Appeal, Luke contended that as a result of unusual and anomalous events which occurred during May 1973, the application to the firm of the provisions of Section 212.93 constitutes a gross inequity. Luke further contended that it would incur a serious hardship if it were required to refund the $28,035.41 in alleged overcharges cited in the Remedial Order. In considering Luke's Appeal, the FEA noted that the arguments presented by Luke had already been considered at length and rejected by the FEA in two prior exception proceedings. The FEA further noted that Luke failed to assert in its Appeal that the factual or legal findings contained in the October 5 Remedial Order are erroneous. Accordingly, Luke's Appeal was denied.

Standard Oil Co. of Calif.; San Francisco, Calif.; FEA–0889, FEA–0911

Atlantic Richfield Co.; Los Angeles, Calif.; FEA–0913, FEA–0915

Texaco, Inc.; New York, N.Y.; Gulf Oil Corp.; Los Angeles, Calif.; Motor Gasoline Allocation

The Standard Oil Company of California (Socal), the Atlantic Richfield Company (Arco), Texaco, Inc. (Texaco), and the Gulf Oil Corporation (Gulf) filed Appeals from the Decision and Order which the Federal Energy Administration issued to the UCO Oil Company (UCO) on June 11, 1976. *UCO Oil Company*, 3 FEA Par. 83,219 (June 11, 1976). Pursuant to the provisions of the June 11 Decision, the Regional Administrator of FEA Region IX directed Socal, Arco, Texaco and Gulf to make available for sale to UCO during the period June through August 1976 a total of 5,659,220 gallons of motor gasoline in place of higher priced supplies which UCO would otherwise have been entitled to receive from two of its base period suppliers, The Oil Shale Corporation (Tosco) and the Macmillan Ring-Free Oil Company, Inc. The firms' Appeals of the June 11 Decision, if granted, would result in an order vacating the June 11 Order. In considering the Appeals in a consolidated proceeding, the FEA determined that, contrary to the appellants' assertion, the FEA specifically adjusted the measure of relief granted UCO in the June 11 Decision to take into account the fact that a significant extent of the financial difficulties which UCO is experiencing is a result of the firm's own discretionary business decision. The FEA also found that the appellants' had shown no basis for their claim that the exception relief which had been approved unreasonably permits UCO to obtain its historic markup on sales of motor gasoline, since the June 11 Decision did not in any way guarantee UCO its historic markup in those sales. With respect to the appellants' contention that the FEA failed to adequately consider UCO's surplus product position in the exception proceeding, the FEA found that UCO's position with respect to surplus motor gasoline had been fully considered in the previous proceeding, and that UCO was able to alleviate only a minor portion of the serious financial hardship it was experiencing through purchases of surplus product. With respect to the appellants' argument that the relief granted in the June 11 Decision frustrated several important national energy policy objectives, the FEA held that the June 11 Decision attempted to arrive at an appropriate balance of a number of the objectives specified in the Emergency Petroleum Allocation Act of 1973, as amended, and that no showing had been made by the appellants that the conclusions reached were erroneous, arbitrary or capricious. Finally, the FEA found the appellants' claim that they were deprived of their due process rights to be without merit. During the course of the initial UCO exception proceeding, the appellants were not readily ascertainable as being aggrieved parties, and they have been afforded a full opportunity to challenge any part of the exception determinations during the course of their present Appeals. Based on these findings, the FEA denied the Appeals.

REQUESTS FOR EXCEPTION

Robert G. Cagwin, d.b.a. Lincolnway Mobil; New Lenox, Ill.; FEE–2335; Motor Gasoline

Lincolnway (Lincolnway) filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would have resulted in the assignment of a new, lower-priced supplier of motor gasoline to replace the firm's base period supplier, the Marcley Oil Company. Although Lincolnway claimed that it was experiencing a serious financial hardship as a result of a disparity between the price it paid Marcley for motor gasoline and the prevailing price paid for that fuel by its competitors, the firm failed to submit any data to substantiate that contention. In view of the fact that Lincolnway refused to submit any financial or operating data in support of its contention, despite repeated requests to do so, the FEA denied the firm's exception request.

ECO Petroleum Corp.; Houston, Tex.; FEE–3075; Motor Gasoline

ECO Petroleum Corporation (ECO) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment by the FEA of a new, lower-priced supplier of motor gasoline to replace ECO's base period suppliers. In considering ECO's exception request, the FEA determined that the firm's current cost of motor gasoline is less than one cent higher than the average price charged by wholesale purchaser-resellers of motor gasoline which supply ECO's competitors. The FEA further found that ECO has operated profitably in the past despite the fact that its cost of motor gasoline has historically been higher than the price paid by some of its competitors. Therefore, the FEA concluded that ECO's current financial difficulties are not solely attributable to the higher prices which it must pay its base period suppliers for motor gasoline, and its request for exception relief was denied.

Farmland Industries, Inc.; Kansas City, Mo.; FEE-3219 (Gillette), FEE- 3220 (Lamont), FEE-3221 (Mertzon), FEE-3222 (Quitman); Natural Gas Liquid Products

Farmland Industries, Inc. (Farmland) filed four Applications for Exception from the provisions of 10 CFR 211.165 which, if granted, would permit Farmland to increase the selling prices for the natural gas liquid products produced at certain of its natural gas processing plants. In those applications, Farmland requested that the exception relief previously granted to the firm on August 31, 1976, be extended for an additional period of time. *Farmland Industries, Inc.*, 4 FEA Par. 83,074 (August 31, 1976). In considering Farmland's requests, the FEA determined that during the fourth quarter of 1976 Farmland had experienced non-product cost increases at four gas plants which substantially exceeded the $.005 per gallon passthrough permitted under the provisions of Section 212.165. Based on the criteria set forth in *Superior Oil Co.*, 2 FEA Par. 83,271 (August 29, 1975) and other previous Decisions, the FEA granted exception relief for each of these plants.

Kamur Industries, Inc.; Oakland, Calif.; FEE-2956; Motor Gasoline

Kamur Industries, Inc. (Kamur) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment of a new supplier of motor gasoline to replace the Mobil Oil Corporation (Mobil), Kamur's base period supplier for its East 14th Street Outlet. In its submission, Kamur requested that the Standard Oil Company of California (Standard) be designated as the new supplier. In considering Kamur's exception application, the FEA found that, contrary to Kamur's contention, the FEA regulations do not prevent Kamur from terminating its supply contract with Mobil and entering into a contract to purchase motor gasoline from Standard, provided that Standard has surplus product available and complies with the provisions of 10 CFR 211.10(g). In accordance with the precedents established in prior decisions, Kamur's claim that the provisions of Section 211.9 were adversely affecting the firm was analyzed in terms of the effect on its entire petroleum-related activities. The FEA found that although Kamur's East 14th Street Outlet has operated at a loss, the firm as a whole has operated on a profitable basis. Consequently, Kamur had not demonstrated that it would incur a serious hardship as a result of the FEA regulatory requirement that its existing base period relationship with Mobil be maintained, and its exception application was therefore denied.

Oil Properties Co., Inc.; Augusta, Kans.; FEE-3133; Crude Oil

Oil Properties Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the approval of retroactive exception relief which would relieve Oil Properties of the obligation to refund any revenues which the firm may have realized as a result of improperly charging exempt prices for the crude oil which it produced from the Lang Lease during 1974. In its exception application, Oil Properties contended that it had properly classified the Lang Lease as a stripper well lease pursuant to the provisions of 10 CFR 210.32 which were promulgated on January 15, 1974. However, the firm contended that it was unaware of a subsequent amendment to Section 210.32 under which the Lang Lease could not be properly classified as a stripper well lease and that, as a result, it had overcharged its customers. In considering Oil Properties' application, the FEA determined that the firm had failed to meet its affirmative obligation to become cognizant of the correct application of FEA Regulations to its operations. The FEA further determined that Oil Properties had failed to show that it would experience a severe financial hardship if it were required to refund the alleged overcharges. The FEA concluded that the firm had failed to satisfy the standards for approval of retroactive exception relief, and its Application for Exception was denied.

OKC Corp.; Dallas, Tex.; FEE-2777; Crude Oil

OKC Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve OKC of any obligation to purchase entitlements during the period April through September 1976. In its submission, OKC contended that exception relief is necessary to permit the firm to attain a profit margin and a return on invested capital in its fiscal year ending September 30, 1976, which is at least comparable to the firm's historical operating results. In considering OKC's request, the FEA observed that a sharp reduction in OKC's allocation of United States Geological Survey (USGS) royalty oil, which was the firm's principal source of old crude oil, had caused OKC's entitlement purchase obligations to be concentrated in the three month period from April through June 1976. In order to correct this problem, the FEA had on its own motion issued a Supplemental Order which stayed the firm's purchase obligations during that period and permitted OKC to apply one-third of its total entitlement purchase obligations for the months of April through June 1976 against the entitlement sales revenues which the firm anticipated receiving during the period July through September 1976. *OKC Corp.*, 3 FEA Par. 83,231 (June 14, 1976). In the present proceeding, the FEA determined that this prior relief had mitigated any adverse effects on OKC's sudden change in status under the Entitlements Program. In view of the fact that OKC remained a net seller of entitlements during the six month period from April through September 1976, the FEA concluded that the firm is not being adversely affected by the Entitlements Program and that exception relief which would enhance the benefits which OKC already realizes under the Program is not appropriate. The firm's exception application was therefore denied.

Sid Richardson Carbon and Gasoline Co.; Fort Worth, Tex.; FEE-3331 (Keystone); Natural Gas Liquid Products

Sid Richardson Carbon and Gasoline Company (Richardson) filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Richardson to increase the selling prices for the natural gas liquid products produced at its Keystone natural gas processing plant. In that Application, Richardson requested that the exception relief previously granted to the firm on August 19, 1976, be extended for an additional period of time. *Sid Richardson Carbon and Gasoline Company*, 4 FEA Par. 83,058 (August 19, 1976). In considering Richardson's request, the FEA determined that during the third quarter of 1976 Richardson had experienced a non-product cost increase at the Keystone gas plant which substantially exceeded the $.005 per gallon passthrough permitted under the provisions of Section 212.165. Based on the criteria set forth in *Superior Oil Co.*, 2 FEA Par. 83,271 (August 29, 1975), and previous Decisions, the FEA granted exception relief for the Keystone plant for the period December 1, 1976 through May 31, 1977.

Western Slope Fuel Co.; Denver, Colo.; FEE-3077; Butane

Western Slope Fuel Company (Western Slope) filed an Application for Exception from the provisions of 10 CFR 212.93. The exception request, if granted, would permit Western Slope to increase the prices which it charges for butane products above the maximum levels permitted under the Mandatory Petroleum Price Regulations to reflect non-product cost increases which it experienced. In addition, Western Slope would be permitted to retain any revenues which it may have realized by charging prices for butane which exceeded the maximum levels permitted under Section 212.93. In considering the application, the FEA determined that Western Slope had failed to provide any evidence to support its claims that it had actually experienced significant non-product cost increases which adversely affected the profitability of the firm's butane resale operations. Western Slope also failed to provide evidence that it would experience an irreparable injury in the absence of retroactive exception relief. The FEA further determined that the firm's contention that butane resellers in general should be permitted to increase their selling prices by $.005 to reflect non-product cost increases was not an issue which should appropriately be resolved in an exception proceeding. The Application for Exception filed by Western Slope was therefore denied.

Whitco, Inc.; Dallas, Tex.; FEX-0101; Motor Gasoline

Whitco, Inc. filed an application for an extension of the exception relief previously granted the firm from the provisions of 10 CFR 211.25. *Whitco, Inc.*, 3 FEA Par. 87,011 (September 8, 1976) (Supplemental Order). Under the terms of the September 8 Order, the Regional Administrator of FEA Region VI was directed to determine whether Whitco would continue to experience a gross inequity unless it received additional exception relief and then to recommend to the FEA Office of Exceptions and Appeals whether exception relief should be extended. Based on the new data submitted by the firm and the recommendation of the Regional Administrator, the FEA determined that unless Whitco received additional relief it would continue to experience a serious hardship and gross inequity. The exception relief previously granted was therefore extended through March 31, 1977.

REQUESTS FOR STAY

Emond Oil Company; Pawtucket, R.I.; FES-1002; No. 2 Fuel Oil

Emond Oil Company (Emond) filed an application for Stay of a Remedial Order which was issued to the firm by FEA Region I on September 27, 1976. In considering Emond's stay request, the FEA determined that the firm would experience inordinate difficulty in complying with the refund provisions within the time period specified in the Remedial Order and that the immediate implementation of the refund requirements could impair the firm's continuing operations. Moreover, since a temporary delay in implementing the refund provisions would not cause hardship to Emond's customers, the FEA determined that a stay of the refund provisions was warranted. The FEA also found that if the firm were required to immediately place the full amount of the required refunds in an escrow account, its operating cash would be depleted to such an extent that its continued activities would

be in serious jeopardy. The FEA therefore stayed the Remedial Order on the condition that Emond place a portion of the disputed funds in escrow immediately and deposit the remaining amount in escrow in the form of monthly payments pending a final determination of its Appeal.

Louisiana Land and Exploration Co.; Washington, D.C.; FES–1062; Refined Products

The Louisiana Land and Exploration Company (LL&E) filed an Application for Stay in which it requested that the provisions of a Decision and Order issued to LL&E by the FEA on October 15, 1976 be stayed pending a determination of an appeal from that Order which LL&E intends to file. In the October 15 Order, exception relief was approved which permitted LL&E to sell the refined products which it produced at its Mobile, Alabama refinery and sold during the month of January 1976, at price levels which exceeded the firm's maximum allowable prices. However, as a condition of the relief, LL&E was required to deduct the amount of revenues which it realized as a result of charging prices in excess of its maximum allowable prices from its bank of unrecouped increased costs during the period November 19 through April 19 . In its Application for Stay, LL&E contended that it is impossible for the firm to fulfill the requirements of the October 15 Order. In considering the Application, the FEA found that LL&E has no bank of current unrecouped costs which could be reduced to satisfy the provisions of the Order. In addition, the FEA determined that since only a small proportion of LL&E's refined products are now covered by FEA Price Regulations, it is unlikely that the firm will accumulate a bank of unrecouped costs within the foreseeable future. The FEA also found that if LL&E were required to comply with the Order by reducing its selling prices for covered products to offset the excess revenues it realized in January 1976, it would be forced to reduce its prices for butane so significantly as to cause price distortions and would possibly be unable to recover the revenues in the event its Appeal is granted. Based on these considerations, the FEA granted LL&E's Application for Stay.

Peters Fuel Corp.; Oakland, Md.; FES–1005; Diesel Fuel; Kerosene; No. 2 Fuel Oil

Peters Fuel Corporation requested a Stay of the requirements of a Remedial Order issued to the firm by FEA Region III on October 6, 1976. The Remedial Order found that during the period November 1, 1973 through August 28, 1975, Peters had charged its customers prices for No. 2 fuel oil, diesel fuel and kerosene which were in excess of the maximum permissible levels specified in 10 CFR 212.93. The Remedial Order directed Peters either to remit to each of its identifiable customers the amount which it had overcharged that customer plus interest, or to credit that amount to the accounts of the customers. Approval of the Stay would relieve Peters of the obligation to comply with the provisions of the Remedial Order pending a final determination of its Appeal from the Order. In considering Peters' request, the FEA determined that if a Stay were not granted and the firm were ultimately successful on the merits of its Appeal, Peters would incur an irreparable injury because of the extensive efforts which would be necessary to recover the refunds which it made pursuant to the Remedial Order. The FEA also determined that the Peters' Appeal had raised substantial issues concerning the propriety of the Remedial Order and that it was therefore appropriate to preserve the status quo ante. Under these circumstances the FEA concluded that a stay of the refund provisions of the Remedial Order was warranted. However, as a condition of the Stay, the FEA required Peters to place the funds in question into an escrow account.

Quincy Oil, Inc.; Quincy, Mass.; FES–1031; No. 6 Fuel Oil

Quincy Oil, Inc. (Quincy) filed an Application for Stay of a Remedial Order which FEA Region I issued to the firm on November 2, 1976. The Remedial Order directed Quincy to refund to the Taunton Municipal Lighting District revenues which the firm had realized by charging prices for No. 6 fuel oil which exceeded the maximum permissible price levels permitted by 6 CFR 150.-359 and 10 CFR 212.93. Approval of a stay would relieve Quincy of the obligation to comply with the provisions of the Remedial Order pending a final determination on an Appeal from the Remedial Order which Quincy had filed. In considering Quincy's request, the FEA applied the principles established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), *modified*, 3 FEA Par. 85,040 (July 8, 1976). On the basis of these principles, the FEA concluded that a stay should be granted since Quincy might suffer an irreparable injury if it is required to refund the revenues involved prior to a determination on its Appeal. The FEA further concluded, however, that in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Quincy's placing the funds in question into an escrow account. Since the financial data submitted by Quincy demonstrated that it would be inappropriate to require the firm to immediately deposit the entire amount of the refunds in escrow, the FEA directed Quincy to place a portion of the refunds in the escrow account immediately and to deposit the remaining refunds in the escrow account on a monthly basis during the period January through April 1977.

DISMISSALS

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Krum Oil Co., Inc.; Krum, Tex.; FEE–3277

TEMPORARY STAYS

The following Applications for Temporary Stay were denied on the grounds that the applicant had failed to make a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Southland Oil Co.; Washington, D.C.; FST–0018

Time Oil Co.; Los Angeles, Calif.; FST–0020

The following Application for Temporary Stay was dismised on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Arizona Fuels Corp.; Washington, D.C.; FST–0019

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 200 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2754 Filed 1-25-77;9:43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of November 29 through December 3, 1976

Notice is hereby given that during the week of November 29 through December 3, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

REQUESTS FOR EXCEPTION

Anadarko Production Co.; Houston, Tex.; FEE–3242; Crude Oil

The Anadarko Production Company filed an Application for Exception in which it requested that the relief previously granted to the firm be extended for an additional period of time. *See Anadarko Production Company*, 3 FEA Par. 83,221 (June 15, 1976). The request, if approved, would permit Anadarko to continue selling a portion of the crude oil which it produces from the Herrin-Burson Harris Sand Unit located in Creek County, Oklahoma for the benefit of the working interest owners at upper tier ceiling prices. In considering Anadarko's exception request, the FEA determined that the Unit is continuing to incur such significant increased operating costs that the working interest owners lack an economic incentive to continue secondary recovery operations at the Unit if the crude oil produced must be sold at the lower tier ceiling price. In view of this determination and on the basis of the operating data which the firm submitted for its most recently completed fiscal period, the FEA concluded that the exception relief previously granted should be extended and that Anadarko should be permitted to sell 55.07 percent of the crude oil produced from the Unit for the benefit of the working interest owners at upper tier ceiling prices.

City of Long Beach, Calif.; Long Beach, Calif.; Fee–3157; Crude Oil

The City of Long Beach, California, filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit Long Beach and all the other working interest owners to sell the crude oil which they produce from Fault Block Unit 2 located in the western half of the Wilmington Field in California at a price which exceeds the lower tier ceiling price. In considering the Long Beach exception request, the FEA determined that: (i) the crude oil production costs incurred with respect to Unit 2 currently exceed, and are reasonably projected to exceed, the revenues which would be obtained from charging the applicable lower tier ceiling prices; (ii) consequently, Long Beach and the other working interest owners no longer have an economic incentive to continue to operate Unit 2 if the crude oil produced must be sold at the

lower tier ceiling price; and (iii) it is highly unlikely that the crude oil in the geological formation underlying Unit 2 could be recovered by wells in other areas of the Wilmington Field. The FEA therefore concluded that, in order to prevent the application of the FEA Regulations in this particular situation from frustrating the effectuation of natural energy policy objectives and from reducing the available supply of domestic crude oil, appropriate exception relief should be approved. On the basis of the standard established in similar previous Decisions and the financial data submitted by Long Beach, the FEA granted exception relief which permits Long Beach and the other working interest owners to sell 18.0791 percent of the crude oil produced for their benefit from Unit 2 at upper tier ceiling prices.

Colonial Oil Co.; Jacksonville, Fla.; Fee-3330; Motor Gasoline

On July 3, 1975, the FEA granted exception relief to Colonial Oil Company (Colonial) on the ground that the Application to it of the provisions of 10 CFR, Part 211, which require adherence to the base period supplier/purchaser relationship, resulted in a serious hardship to the firm. *Colonial Oil Co.*, 2 FEA Par. 83,201 (July 3, 1975). In that Order the Regional Administrator for the FEA, Region IV, was directed to assign to Colonial a supplier whose wholesale prices for motor gasoline, No. 2 fuel oil and kerosene were within the range of prices paid for those products in Colonial's marketing area by wholesale marketers. The Order further provided that upon the submission of certain financial and operating data Colonial could request that the exception relief granted to the firm be extended for an additional period of time. On the basis of the data submitted by Colonial in connection with its present Application and the recommendation of the Regional Administrator, the FEA determined that: (1) the serious hardship which Colonial experienced in the past as a result of the provisions of 10 CFR 211.9 would continue to exist unless further exception relief were granted with respect to its motor gasoline supplies; and (ii) in order to alleviate this hardship Colonial should be assigned a lower-cost supplier for the months of December 1976 and January and February 1977 for the entire volume of gasoline which it is entitled to receive from its principal base period supplier.

Continental Oil Co.; Houston, Tex., FEE-3259; Natural Gas Liquid Products

Continental Oil Company filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges for natural gas liquid products to reflect non-product cost increases which the firm has incurred at its Thomas natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Continental had made such a showing with respect to its Thomas gas plant and therefore granted appropriate exception relief with respect to that plant for the period December 3, 1976 through June 30, 1977.

Eason Oil Co.; Oklahoma City, Okla.; FEE-3235; (Crescent) Natural Gas Liquids

Eason Oil Company filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Eason to increase the selling price it charges for natural gas liquids to reflect non-product cost increases which the firm has incurred at its Cresent natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experience since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids which is permitted under Section 212.165. The FEA found that Eason had made such a showing with respect to its Crescent gas plant and therefore granted Eason appropriate exception relief with respect to that plant for the period December 3, 1976 through April 30, 1977.

Getty Oil Co.; Los Angeles, Calif., FEE-3295 (Buena Vista Hills), FEE-3296 (Cocodrie), FEE-3297 (Cymric), FEE-3298 (Dollarhide), FEE-3299 (Elk City), FEE-3300 (Elmwood), FEE-3301 (Fuller), FEE-3302 (Hitchcock), FEE-3303 (Katy), FEE-3304 (Kermit), FEE-3305 (Kettleman Hills), FEE-3306 (Levelland), FEE-3307 (Mooreland), FEE-3308 (New Hope), FEE-3309 (Normanna), FEE-3310 (North Cowden), FEE-3311 (O'Keene), FEE-3312 (Old Ocean), FEE-3313 (Palacios), FEE-3314 (Snyder), FEE-3315 (South Peacan Lake), FEE-3316 (Stevens Caldon), FEE-3317 (Ventura), FEE-3318 (Vermillion), FEE-3319 (West Bernard), FEE-3320 (Yates); Natural Gas Liquids and Products

Getty Oil Company filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 26 of its natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids which are permitted under Section 212.165. The FEA found that Getty had made such a showing with respect to 21 of the 26 plants and therefore granted Getty appropriate exception relief with respect to those plants. However, the FEA denied exception relief for the remaining five plants on the grounds that the non-product cost increases experienced at those plants were not materially in excess of the passthrough permitted under Section 212.165.

Harris Enterprises, Inc.; Portland, Oreg.; FEE-2820; Motor Gasoline

Harris Enterprises, Inc. (Harris) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the issuance of orders assigning Harris new, lower-cost suppliers for a portion of the firm's total base period use of motor gasoline to replace its four principal suppliers: Aminoil U.S., Lion Oil Company, Mercury Oil Company and Powerine Oil Company. In considering the application, the FEA determined that, contrary to Harris' allegations, the average price which Harris pays Aminoil, Powerine, Mercury and Lion is only marginally higher than the average of the prices which the firm's competitors are required to pay their suppliers. The FEA also found that Harris is able to offset the marginally higher price of the gasoline received from the four suppliers by making other purchases of lower-priced gasoline. As a result, the weighted average price which Harris pays for its motor gasoline supplies is not significantly different from the prices which the firm's competitors pay to their suppliers for motor gasoline. The FEA concluded that Harris had therefore failed to establish that the maintenance of its base period supplier/purchaser relationship with Aminoil, Mercury, Lion and Powerine resulted in a serious hardship or gross inequity to Harris and the firm's exception application was denied.

Oklahoma Natural Gas Co.; Tulsa, Okla.; FEE-3201 (Garvin County); Natural Gas Liquid Products

Oklahoma Natural Gas Company (ONGC) filed an Application for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit ONGC to increase the selling prices it charges for natural gas liquid products to reflect non-product cost increases which the firm has incurred at its Garvin County natural gas processing plant. In considering the application, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that ONGC had made such a showing and therefore granted ONGC appropriate exception relief with respect to that plant for the period December 3, 1976 through May 31, 1977.

Small's LP Gas Co.; Wyatt, Mo.; FEE-3042; Propane

Small's LP Gas Company filed an Application for Exception to the provisions of 10 CFR 211.9 which, if granted, would result in the issuance of orders by the FEA assigning Small's a new, lower-priced supplier of propane to replace its base period supplier, Burmah LP-Gas, Inc. In considering Small's exception application, the FEA found that the prices which Burmah charged Small's for propane were substantially above the prices which Small's competitors paid their suppliers. Although Small's had drastically reduced its markup in order to remain competitive in retail sales, the situation which the firm was encountering was nevertheless so severe as to threaten its continued existence as an independent marketer. The FEA also found that Small's had been unable to alleviate the severe financial difficulties which it was experiencing by purchasing surplus propane at competitive price levels. On the basis of these findings, the FEA concluded that the application of Section 211.9 resulted in a serious hardship to Small's and, pursuant to the formula which had been applied in prior cases, exception relief was approved which permitted Small's to receive its base period use of propane for December 1976 and for the January through March 1977 allocation quarter from a new supplier.

Standard Oil Co. of Ohio; Cleveland, Ohio; FEE-2706; Refined Petroleum Products

The Standard Oil Company of Ohio (Sohio) filed an Application for Exception from the provisions of Subpart E of the Mandatory Petroleum Price Regulations. The request, if approved, would permit Sohio to reduce its May 1973 base cost of crude oil for purposes of calculating the maximum allowable prices which it is permitted to charge for refined products under Section 212.83. Sohio contended that as a result of an expansion project undertaken at its Marcus Hook refinery, the refinery now uses lower priced types of crude oil and yields different proportions of refined products than it did in May 1973. The firm claimed that as a consequence it was unable to maintain the same margin between its crude oil costs and the

selling prices of its products that existed in May 1973. In considering Sohio's Application, the FEA observed that although Section 212.83 generally permits a refiner to maintain the margin that existed between its May 1973 cost of crude oil and its May 15, 1973 selling prices for refined products, certain changes in the type of crude oil processed and the mix of products refined could result in a reduction of a refiner's gross margin. With regard to Sohio, the FEA found that although the firm had experienced a reduction in the gross margin realization of its Marcus Hook refinery, that reduction had not resulted in a serious hardship to Sohio since its overall refining and marketing operations were achieving a near record level of profitability. The FEA also found that Sohio failed to establish that the impact of Section 212.83 on the firm is significantly different from or more burdensome than its impact on other refiners which had experienced similar changes in the types of crude oil they process and the product mix which is produced. The FEA concluded that since the reduction in gross margin at the Marcus Hook refinery was not significantly impeding Sohio's operations or affecting the firm in a unique or disproportionate manner, Sohio had failed to establish that a gross inequity existed. Accordingly, Sohio's Application for Exception was denied.

REQUESTS FOR STAY

Glacier Park Co.; Osage, Wyo.; FES–1050; Crude Oil

Glacier Park Company requested that the FEA relieve it of the requirement that it purchase 30,513 of the 76,568 entitlements which it was obligated to buy in accordance with the Entitlement Notice which the FEA published on November 22, 1976. In considering the Application for Stay, the FEA determined that the Office of Regulatory Programs had incorrectly calculated the firm's September entitlement obligation by including certain entitlement obligations which the firm had previously satisfied. On the basis of the analysis conducted, the FEA concluded that Glacier Park had made a substantial *prima facie* showing that it would succeed on the merits of its Appeal, and its Application for Stay was granted.

T. D. Skelton d/b/a Skelton Oil Co.; Hobbs, N. Mex.; FES–1039; Crude Oil

T. D. Skelton d/b/a Skelton Oil Company (Skelton) requested that a Remedial Order issued to the firm by the FEA on November 5, 1976 be stayed pending a final determination of the firm's Appeal from that Order. In the Remedial Order, the FEA determined that Skelton had sold crude oil at prices which exceeded the maximum permissible levels specified in 10 CFR, Part 212, Subpart D. The Remedial Order therefore directed Skelton to refund the excess revenues it previously realized in twelve equal monthly payments. In considering the contentions raised by Skelton its stay request, the FEA observed that in the Appeal which Skelton filed in connection with its stay application the firm did not dispute the propriety of the refunds required by the Remedial Order but instead requested an additional period of time in which to remit the required refunds. The FEA determined that even if Skelton prevails in its Appeal, any refunds which the firm makes during the period of time in which its Appeal is pending could properly be applied towards Skelton's remaining total refund obligation over the entire period of time which is found to be appropriate in the Appeal proceeding. The FEA also determined that Skelton failed to show that it would experience any serious financial difficulties as a result of compliance with the terms of the Remedial Order prior to a final determination on the Appeal. With respect to Skelton's claim that if it complies with the Order it will lack sufficient funds to meet the repair costs of a major equipment malfunction, the FEA found that Skelton failed to submit any evidence which would indicate that the occurrence of this type of malfunction is likely during the pendency of its Appeal. The Application for Stay was therefore denied.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Husky Oil Co. of Delaware; Washington, D.C.; FEE–3158

Theodore Gore; Wichita, Kans.; FES–0055, FEA–1033

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Frank Katy; Rio Hondo, Tex.; FEA–0987

The following submission was dismissed after the applicant repeatedly failed to respond to requests for additional information:

Diamond Coal & Oil Co.; Chicago, Ill.; FEE–3148

The following submission was dismissed on the grounds that the request is now moot:

Luke Brothers, Inc.; Oklahoma City, Okla. FES–0054

The following submission was dismissed on the grounds that the applicant failed to provide any new material or arguments which would materially affect the basis of a prior final decision or otherwise justify re-opening that proceeding:

Golden Flame Fuel Co., Pittsburgh, Pa.; FMR–0067

The following submissions were dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Jack Roland's Truck Stop; Marianna, Fla.; FEE–3397

Rock Island Refining Corp.; Washington, D.C.; FSG–0031

TEMPORARY STAYS

The following Application for Temporary Stay was denied on the grounds that the applicant had failed to make a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Delta Refining Co.; Washington, D.C.; FST–0022

The following Application for Temporary Stay was granted on the grounds that the applicant had made a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Southwestern Refining Co., Inc.; Washington, D.C.; FST–0021

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, NW, Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2753 Filed 1-25-77;9:43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 6 through December 10, 1976

Notice is hereby given that during the week of December 6 through December 10, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Clark Oil & Refining Corp.; Milwaukee, Wis.; FEA–1030; Freedom of Information

Clark Oil & Refining Corporation filed an Appeal from an Order issued to it by the Information Access Officer denying a Request for Information which the firm had filed under the Freedom of Information Act, 5 U.S.C. 552. Clark had initially requested the FEA to release documents to it which revealed the weighted average cost per barrel of crude oil incurred by two groups of small refiners before and after adjustments for entitlement costs and revenues. The Information Access Officer denied Clark's request on the grounds that the documentary records containing the requested information do not exist. In its Appeal, Clark contended that the data which it sought exists in raw form and that the FEA can compile summaries with relative ease. In analyzing the Clark Appeal submission, the FEA noted that Clark's Appeal is moot with respect to the period February through July 1976 since the documentary material for that period was released to the firm subsequent to the date on which it filed its Appeal. However, the FEA found that the remainder of the requested data has not been compiled by any FEA office. Since the Freedom of Information Act does not place an affirmative duty on Federal agencies to create documents in response to Freedom of Information requests submitted under Section 552(a)(3), the FEA determined that Clark's Appeal should be denied.

Eastern Air Lines, Inc.; Miami, FL.; FEA–0847; Crude Oil

Eastern Air Lines, Inc. appealed from an Interpretation in which the FEA General Counsel determined that the unincorporated operating divisions of Atlantic Richfield Company (Arco) and Mobil Oil Corporation (Mobil) are "affiliated entities" within the meaning of 10 CFR, Part 212, Subpart E. Section 212.83(b) of that subpart provides that, in determining the maximum prices which a refiner may charge for covered products, "transactions between affiliated entities may be used to calculate increased product costs." In considering Eastern's Appeal, the FEA noted that the language used in Section 212.82 to define "transactions between affiliated entities" plainly means that an affiliated entity may be an entity which is part of the same firm. The FEA also stated that

the definition makes no distinction as to the form of a firm's organization, nor is the language directed only to incorporated subsidiaries. Although Eastern asserted that no "transaction" can take place unless a transfer for value has occurred, the FEA found that the regulations expressly contemplate that transfers may occur between affiliated entities and that such a transfer is regulated under Section 212.72 as an imputed sale. The FEA further determined that the procedures followed by the General Counsel in issuing the Interpretation did not violate Eastern's due process rights. The FEA concluded in this respect that even though third parties are not entitled as of right to notice and an opportunity to participate in interpretation proceedings, Eastern had ample opportunity to submit its views and the material which Eastern did in fact file was taken into consideration. On the basis of the foregoing considerations, the FEA denied Eastern's Appeal.

Exxon Co., U.S.A.; Houston, Tex.; FEA–1060; Crude Oil

Exxon Company, U.S.A. appealed from the Entitlement Notice which the FEA issued for August 1976. In the Appeal, Exxon alleged that the quantity of old oil which was actually produced in the United States during the period November 1974 through August 1976 exceeded the old oil receipts stated in the FEA Entitlement Notices. Exxon contended that this apparent disparity distorted the adjusted national old oil supply ratio and thereby increased the number of entitlements which Exxon is required to purchase. In considering the Appeal, the FEA noted that Exxon's contention with respect to the inaccuracy of old oil receipts stated in the Entitlement Notices had previously been considered and rejected by the FEA in Decisions denying Exxon's Appeals from prior Entitlements Notices. The FEA held that since Exxon advanced no new arguments in support of its present Appeal, the previous determinations were controlling. Exxon's Appeal was therefore denied.

Frank Dupuis Co.; Pawtucket, R.I.; FEA–0997; No. 2 Heating Oil

The Frank Dupuis Company (Dupuis) appealed from a Remedial Order which was issued to the firm by FEA Region I on September 30, 1976. The Remedial Order directed Dupuis to refund revenues obtained from charging illegally high prices for heating oil during the period November 1, 1973 through February 26, 1976. Dupuis contended on appeal that the FEA's use of May 15, 1973 to determine maximum permissible selling prices unconstitutionally deprives the firm of its property without due process of law. In the Decision which it issued with respect to the Dupuis Appeal, the FEA noted that the Congress had directed the FEA to promulgate an appropriate regulatory program which would govern prices which may be charged for refined petroleum products and that the use of May 15, 1973 as a reference date for computation of maximum permissible prices was a reasonable approach in achieving this objective. Since Dupuis had not shown that the use of May 15, 1973 as the reference date was in any way an abuse of agency discretion, the FEA concluded that Dupuis had failed to demonstrate that the Remedial Order was erroneous or arbitrary or capricious. The firm's Appeal was therefore denied.

D. C. Latimer; Jackson, Miss.; FEA–0975; Crude Oil

D. C. Latimer (Latimer) filed an Appeal from an Interpretation which had been issued to him by the Regional Counsel of FEA Region IV. The Interpretation held that crude oil which is produced in one month but sold in another is deemed to be "produced and sold" in the month of sale for purposes of determining the base production control level (BPCL) of a property. In sustaining the Regional Counsel's Interpretation, the FEA held that the phrase "produced and sold" was construed in the same manner by the Cost of Living Council and that this construction provides a rational and explicit manner for determining a property's base production control level. Accordingly, Latimer's Appeal was denied.

Santa, Fuel, Inc.; Bridgeport, Conn.; FEA–0936; No. 2 Fuel Oil

Santa Fuel, Inc. appealed from a Remedial Order which had been issued to the firm by FEA Region I. The Remedial Order found that during the period November 1, 1973 through June 30, 1974 Santa Fuel sold No. 2 fuel oil to the State of Connecticut at prices which exceeded the price levels permitted under Section 212.93 of the FEA Regulations and Section 150.359 of the Cost of Living Council (CLC) Regulations. Santa Fuel's Appeal, if granted, would relieve the firm of the obligation to refund the amount of the overcharges plus interest. In considering the Appeal, the FEA rejected Santa Fuel's assertion that the CLC Regulations and subsequent FEA Regulations did not apply to the firm's contracts executed prior to the promulgation of the FEA Mandatory Petroleum Price Regulations. The FEA observed that, although Subpart E of the CLC Regulations did exempt from price controls prices specified in contracts which were entered into before 9:00 p.m., June 13, 1973, with respect to delivery occurring after August 12, 1976, the Subpart E exemption was superseded by Subpart L which relates to the pricing of petroleum and petroleum products. The FEA held that since Santa Fuel's contract with the State was subject to price controls under Subpart L those regulations abrogated the price provisions of any private contractual arrangement to the extent that the contract specified prices in excess of those permissible under the FEA regulatory program. Consequently, the price provisions of preexisting contracts may not be relied upon as a defense to remedial action by the FEA Office of Compliance. In addition, the FEA determined that Santa Fuel failed to demonstrate that it would experience a serious hardship if it were required to refund the overcharges to the State. The firm's Appeal was accordingly denied.

REQUESTS FOR EXCEPTION

Blees Oil Co.; Bowman, N. Dak. FEE–3015; No. 2 Heating Oil

Blees Oil Company filed an Application for Exception from the requirement that it file Form P112–M–1 ("No. 2 Heating Oil Supply/Price Monitoring Report"). In considering the Blees Application, the FEA determined that the firm had failed to submit any material whatever in support of its claim that it is unable to supply the requisite information. The FEA also concluded that Blees failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the aggregate data which the FEA collects from a sample of firms, including Blees, as to the supply and price of No. 2 heating oil. Blees' request for exception relief was therefore denied.

BP Oil Inc.; Cleveland, Ohio; FEE–2691; Unleaded Gasoline

BP Oil, Inc. filed an Application for Exception from the provisions of 10 CFR 212.83 and 10 CFR 212.112 which, if granted, would have permitted BP, a wholly-owned subsidiary of Standard Oil Company (Sohio), to calculate its selling prices for unleaded gasoline separately from Sohio. In considering BP's Application, the FEA observed that in prior cases it had granted exception relief from the definition of "firm" as specified in 10 CFR 212.82 on the basis of a showing that an entity within a firm maintained completely separate and distinct operations from other parts of the firm. The FEA determined that BP had not established that the degree of independence which characterized the firms involved in prior cases in which exception relief had been approved also existed with respect to Sohio and BP. The FEA further determined that BP had not shown that it was uniquely affected by the FEA Regulations governing the pricing of unleaded gasoline. The FEA held in this respect that Section 212.112 does not produce a gross inequity merely because it may require a firm to sell unleaded gasoline at prices below those charged by similarly situated firms. The FEA also declined to regard BP's inability to price unleaded gasoline at one cent above regular gasoline as a gross inequity. Finally, the FEA determined that the financial material which the firm provided did not demonstrate that the combined BP and Sohio firm is experiencing serious financial difficulties as a result of the FEA regulatory program. Consequently, the FEA denied BP's Application for Exception.

Braden-Deem, Inc.; Wichita, Kans.; FEE–3284; Crude Oil

Braden-Deem, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The request, if granted, would extend the exception relief previously granted to the firm on January 15, 1976, March 11, 1976, and June 29, 1976 and permit Braden-Deem to sell crude oil produced from the Cooper Cove Muddy-Dakota Unit (Cooper Unit) at prices which are in excess of the lower tier ceiling price. *See Braden-Deem, Inc.*, 3 FEA Par. 83,072 (January 15, 1976); *Braden-Deem, Inc.*, 3 FEA Par. 80,597 (March 11, 1976); *Braden-Deem, Inc.*, 3 FEA Par. 83,249 (January 29, 1976). In considering Braden-Deem's Application, the FEA found that during the period April 1976 through September 1976 the operating expenses at the Cooper Unit were lower than the revenues which would have been generated by selling the crude oil at the applicable lower tier ceiling price. The FEA therefore concluded that the firm has a clear economic incentive to continue production at the Cooper Unit in the absence of exception relief. On the basis of the facts presented in the case and the principles established in prior precedents, the exception request was denied.

Farmers Petroleum Cooperative, Inc.; Lansing, Mich.; FEE–3200; Crude Oil

Farmers Petroleum Cooperative, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would result in a determination that the firm's Headquarters Richfield Unit (the Unit) is a stripper well property and that the crude oil produced from the Unit may be sold at exempt price levels. In considering the Application, the FEA noted that Ruling 1975–12 sets forth the criteria for determining which production facilities are multiple completion wells that qualify as two or more wells for the purpose of calculating the average daily production of a property. Based on the record in this proceeding, the FEA determined that the wells of the Unit failed to qualify as multiple completion wells and that the firm had failed to establish that this determina-

tion constituted a serious hardship or gross inequity. Accordingly, Farmers' Application for Exception was denied.

Jannetty Oil, Inc.; Waterbury, Conn.; FEE-3204; No. 2 Heating Oil

Jannetty Oil, Inc. filed an Application for Exception from the requirement that it file Form P112-M-1 ("No. 2 Heating Oil Supply/Price Monitoring Report"). In considering the exception application, the FEA determined that the firm had failed to submit any material whatever in support of its claim that it is unable to supply the requisite information to complete the form. The FEA also concluded that Jannetty failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the aggregate data which the FEA collects from a sample of firms, including Jannetty, as to the supply and price of No. 2 heating oil. Jannetty's request for exception relief was therefore denied.

Schkade Brothers Drilling Co.; Abilene, Tex.; FEE-2722; Crude Oil

Schkade Brothers Drilling Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would have permitted Schkade to receive upper tier ceiling prices for the crude oil it sold from the Latham Lease during the month of February 1976. In its exception application, Schkade indicated that it failed to certify the Lease as a stripper well property in a timely manner as required by Section 212.131 and that as a result it did not receive upper tier prices for the crude oil which it produced from the Lease during February 1976. In considering Schkade's request, the FEA noted that all crude oil producers are subject to the certification requirements set forth in Section 212.131, and Schkade presented no evidence which indicated that the application of these requirements to Schkade is discriminatory or inequitable. The FEA further determined that Schkade failed to submit any material demonstrating that the firm will experience a serious financial hardship as a result of its inability to obtain the additional revenues. Moreover, retroactive exception relief is generally inappropriate unless the firm demonstrates that it would otherwise experience a severe and irreparable injury or that compelling reasons exist for the approval of retroactive relief. The FEA found that since Schkade had failed to satisfy those criteria the firm's Application should be denied.

Sound Refining, Inc.; Tacoma, Wash.; FEE-3154; Crude Oil

Sound Refining, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would have relieved the firm of any obligation to purchase entitlements reflecting receipts of deemed old oil subsequent to October 1, 1976. The FEA determined that Sound was a net seller of entitlements during the first three quarters of its current fiscal year ending December 31, 1976 and would continue to be a net seller of entitlements during the final quarter of its fiscal year. Since the record indicated that Sound will obtain significant benefits under the Entitlements Program, the FEA concluded that the firm had failed to substantiate its contention that the Program would result in a serious financial hardship to the company. Sound's exception request was therefore denied.

Stovall Oil Co.; Casper, Wyo.; FEE-2557; Crude Oil

Stovall Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which it requested permission to sell all of the crude oil it produces from its NPRR No. 3-3 Lease and its Olsen No. 1 Lease at upper tier ceiling prices. Stovall also requested retroactive relief which would permit it to retain revenues it realized subsequent to April 1975 from charging prices which exceeded maximum allowable levels. In considering Stovall's Application, the FEA determined that a secondary recovery (waterflood) operation which Stovall had initiated at the NPRR Lease has been profitable and would continue to be profitable even in the absence of exception relief. Since Stovall had not satisfied the criteria established in previous FEA Decisions concerning requests of this type, this portion of its Application was denied. However, the projections which Stovall submitted with respect to its operations on the Olsen No. 1 Lease indicated that it would incur a substantial operating loss in the absence of exception relief. The FEA found that Stovall would therefore have no economic incentive to continue production from the well and that a substantial amount of otherwise recoverable crude oil would be lost. The FEA concluded that the application to Stovall's Olsen No. 1 Lease of the lower tier ceiling price rule under these circumstances resulted in a gross inequity to the firm and that exception relief should be granted. Based on an analysis of the specific financial and operating data which Stovall had submitted, the FEA determined that the firm should be permitted to sell 100 percent of the crude oil produced from the Olsen Lease for the benefit of the working interest owner at upper tier ceiling prices for a period of six months. With respect to Stovall's request for retroactive relief, the FEA noted that the FEA Office of Compliance is investigating the full extent of Stovall's past overcharges but no determination has yet been made of the firm's full liability. Consequently, the FEA determined that it would be premature to consider the firm's request for retroactive relief.

Tenneco Oil Co.; Houston, Tex.; FEE-3222; Crude Oil

Tenneco Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which would permit it to sell at upper tier prices the crude oil produced from a well which must be drilled to replace an existing well. In considering Tenneco's Application, the FEA determined that: (i) a substantial investment is necessary to drill the replacement well; (ii) this investment would be uneconomic if the crude oil which would be produced from the replacement well were sold at lower tier prices; and (iii) if the replacement well were not drilled, it would become increasingly difficult to recover substantial quantities of crude oil from the reservoir. On the basis of these findings, the FEA concluded that exception relief should be granted to the working interest owner which would provide a sufficient economic incentive to undertake the capital investment required to drill the replacement well. At the same time the relief provided should not permit the firm to receive windfall profits. The FEA concluded that these objectives would be effectuated if Tenneco were permitted to sell at upper tier prices the first 4,671 barrels of crude oil which it produces for its benefit in each of the first two years and the first 4,670 barrels of crude oil produced for its benefit in each of the third through tenth years of the project.

Union Oil Company of Calif.; Los Angeles, Calif.; FEE-2378; Crude Oil

Union Oil Company of California filed an Application for Exception from the provisions of 10 CFR 211.67(d)(2) which would permit the firm to earn entitlement benefits on its total volume of crude oil runs to stills without making an adjustment for the high sulfur, residual fuel oil which Union exports to Petroleos Mexicanos (PEMEX) in Baja California, Mexico, as required under Section 211.67(d)(2). In considering Union's exception application, the FEA observed that the provisions of Section 211.67(d)(2) which require Union to reduce the volume of its crude oil runs to stills used to calculate its entitlement benefits by the number of barrels of residual fuel oil that the firm exported to PEMEX substantially increase the effective cost of the Santa Maria Valley crude oil which Union processes. The FEA found that the effective cost of lower tier, Santa Maria Valley crude oil is higher than the effective cost of a low sulfur, lighter gravity imported crude oil and Union therefore has an economic incentive to discontinue purchasing the former type of crude oil. With respect to the Santa Maria Valley crude oil which Union itself produces, the FEA found that Union had presented no data to show that it lacked an economic incentive as a result of Section 211.67(d)(2) to continue production of crude oil from its own properties. *See Sun Oil Co.*, 4 FEA Par. 83,111 (September 24, 1976). The FEA also determined that independent producers of upper tier crude oil in the Santa Maria Valley could decrease their maximum permissible upper tier ceiling prices by an amount sufficient to provide Union with an economic incentive to continue purchasing the crude oil. Thus, in order to prevent the provisions of Section 211.67(d)(2) from inordinately impeding domestic crude oil production and providing an incentive to import crude oil, the FEA granted Union Oil Company sufficient entitlement benefits to provide it with an economic incentive to continue to purchase lower tier crude oil from independent producers in the Santa Maria Valley.

Francis Uthe; Dumont, Iowa; FEE-3076; Motor Gasoline

Francis Uthe d/b/a Uthe's Corner (Uthe) filed an Application for Exception from the provisions of 10 CFR, Part 211, which, if granted, would have resulted in the issuance of FEA orders assigning Uthe a new supplier of motor gasoline to replace the Ritchie Oil Company (Ritchie) and directing the new supplier to furnish Uthe with its base period use of motor gasoline. Uthe also requested that the Nielson Oil Company (Nielson), the firm from which Uthe is currently purchasing surplus motor gasoline, be assigned as Uthe's base period supplier. In considering the Application for Exception, the FEA determined that Uthe is able to purchase its entire supply of motor gasoline from Nielson and is doing so at favorable price levels. As a result, Uthe is not experiencing a serious hardship. In addition, the FEA found that Uthe had provided no data which indicated that its supplier/purchaser relationship with Ritchie had adversely affected the firm's operations in a significant manner, or that its operations would be significantly affected if the two firms resumed the relationship. The FEA therefore determined that Uthe did not meet the criteria set forth in *Eagle Point School District No. 9*, 2 FEA Par. 80,622 (July 1, 1975); or *George P. Rios*, 4 FEA Par. 83,008 (July 15, 1976), under which exception relief will be granted on gross inequity grounds. The Application for Exception was therefore denied.

Western Oil Lands, Inc.; Reno, Nev.; FEE-3051; Crude Oil

Western Oil Lands, Inc. requested an extension of the exception relief which was granted to the firm on May 18, 1976. *Western*

Oil Lands, Inc., 3 FEA Par. 80,633 (May 18, 1976). In that Decision, the FEA determined that it was not economically feasible for a refiner to purchase the crude oil which Western produces from the Pennington Federal Nos. 2, 4, and 5 Wells in Nye County, Nevada, because of the high transportation costs and entitlement obligations associated with the purchase. In order to remove this economic disincentive, exception relief was approved which permitted refiners to purchase crude oil produced by Western without incurring any entitlement costs. Western also requested in its present submission that the exception relief granted in the May 18 Decision be expanded to permit the firm to classify all of the crude oil which it produces as new oil for the purposes of the Entitlements Program. Western contended that this relief was necessary because it has been unable to locate a purchaser for the crude oil which it produces since the issuance of the May 18 Decision and has been unable to produce crude oil from its three Wells. In considering Western's exception request, the FEA determined that the firm made a strong showing that in the absence of continued exception relief it would be unable to market its crude oil. Consequently, the exception relief granted in the May 18 Decision was extended for an additional four months. However, with respect to Western's remaining request, the FEA found that difficulties which the firm encountered in marketing its crude oil subsequent to the issuance of the May 18 Decision were not directly attributable to the Entitlements Program since the relief approved in that Decision exempted the crude oil produced by Western from the Program. In view of Western's failure to show that the difficulties which it is experiencing result from the application of the FEA regulatory program, the FEA concluded that the modified form of relief sought by the firm was not warranted. Accordingly, Western's request that it be permitted to classify all of its crude oil production as new oil for purposes of the Entitlements Program was denied.

REQUESTS FOR STAY

Arizona Fuels Corp.; Salt Lake City, Utah; FES-0928; Crude Oil

Arizona Fuels Corporation requested that the application to it of 10 CFR 211.67 (the Old Oil Entitlements Program) be stayed pending a determination on an Appeal of a Decision and Order which was issued to Arizona Fuels on July 16, 1976. *Arizona Fuels Corp.*, 4 FEA Par. 83,002 (July 16, 1976). The stay request, if granted, would have relieved the firm of the obligation during November and December 1976 to purchase entitlements at a value in excess of $23,728 per month. In rejecting Arizona Fuels' contention that a Decision issued to it by the FEA on August 27, 1976 increased the firm's entitlement purchase obligation beyond the limit specified in the July 16 Decision, the FEA noted that the August 27 Decision did not itself create an additional entitlement burden but only made additional quantities of crude oil available for purchase by Arizona Fuels. The FEA therefore concluded that Arizona Fuel's claim that the FEA is responsible for the firm's additional entitlement obligation is without merit. The FEA also determined that Arizona Fuels had failed to demonstrate that it would incur an irreparable injury in the absence of stay relief and that Arizona Fuels had also failed to make the type of substantial *prima facie* showing of likelihood of success on the merits of its Appeal contemplated in *Pasco, Inc.*, 2 FEA Par. 85,012 (March 3, 1975). Therefore, the firm's request for a stay was denied.

Beacon Oil Co.; Hanford, Calif.; FES-1051; Crude Oil

Beacon Oil Company filed an Application for Stay of a Decision and Order which was issued to the firm on November 5, 1976 requiring it to purchase entitlements equal in value to $2,071,628 over a 12 month period in order to refund the excessive exception relief that the firm had received during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering the request for stay, the FEA observed that, if Beacon were to prevail on the merits of its Appeal from the November 5 Order, the FEA could adjust Beacon's entitlement obligation in subsequent months to compensate the firm for the additional entitlements it is required to purchase. Since Beacon had submitted no financial data which would indicate that its entitlement obligations would cause the firm to experience cash flow problems or otherwise seriously impair its continued operation, the FEA found no basis for concluding that Beacon would incur the type of irreparable injury which would warrant stay relief. In addition, the FEA found that the issues which Beacon raised had been considered in detail in the November 5 Order and that Beacon had failed to make a *prima facie* showing that the analysis contained in that Order was erroneous. The Application for Stay was therefore denied.

Beren Corp.; Kansas City, Mo.; FES-1050; Crude Oil

Beren Corporation requested that a Remedial Order which was issued to the firm by the Deputy Regional Administrator of FEA Region VIII on November 15, 1976 be stayed pending a final determination of the firm's Appeal. On the basis of a finding that Beren had erroneously classified certain leases as stripper well properties and had been improperly selling the crude oil produced from the leases at exempt price levels, the Remedial Order directed Beren to make refunds for these overcharges within 90 days. In considering the firm's Application, the FEA determined that the firm had satisfied the criteria for the approval of a stay set forth in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), by showing that it would raise substantial issues in its Appeal and that it would be unduly burdensome for the firm to recover the refunds which the Remedial Order required it to make if it succeeded on the merits of its Appeal. Consequently, in accordance with previous Decisions, stay relief was approved on the condition that the contested funds be placed in an escrow account.

With respect to the provisions of the Remedial Order which require Beren to calculate the average daily production from the affected leases in order to ascertain whether any of the properties qualified as stripper well properties during 1975 or 1976, the FEA determined that no showing had been made by the firm that these calculations would result in an irreparable injury. The FEA therefore declined to stay this requirement of the Remedial Order.

Delta Refining Co.; Memphis, Tenn.; FES-1052; Crude Oil

Delta Refining Company filed an Application for Stay of a Decision and Order which was issued to the firm on November 5, 1976 requiring it to purchase entitlements equal in value to $4,559,585 during the period November 1976 through October 1977 in order to offset the excessive exception relief which the FEA found Delta had received during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering Delta's contention that the November 5 Order would compel it to make certain irreversible business decisions, the FEA determined that Delta had failed to show that serious adverse consequences would result from postponing those decisions until a determination is reached on its Appeal or that it would be adversely affected to a material degree if it were to make the type of decisions referred to in its submission. The FEA therefore concluded that Delta's claim of irreparable injury appeared to be largely speculative. The FEA further determined that Delta's Application did not demonstrate a substantial likelihood that the firm would prevail on the merits of its Appeal. Although Delta stated its intention to challenge both an adjustment which was made in the firm's 1975 financial results in order to present those results on the same basis as its historical financial results and the standard which has been utilized for nearly two years in assessing the impact of the Entitlements Program on small refiners, the FEA found that the firm's unsupported challenge of agency action which is not on its face unreasonable does not constitute a *prima facie* showing that the firm will prevail on appeal. The FEA also found that Delta's contentions regarding the propriety and validity of the November 5 Decision were not so persuasive as to lead to the conclusion that stay relief was warranted. With respect to Delta's contention that the FEA cannot require the refund specified in the November 5 Order unless a finding is made that the firm's original projections on which the exception relief was based were materially inaccurate, the FEA observed that since Delta had not presented detailed arguments or cited authority in support of its position the FEA could not agree that the firm's position would be upheld on appeal. The FEA pointed out, moreover, that the fact that Delta's financial and operating results showed that the firm received a far greater measure of exception relief than it was entitled to have received certainly indicated that the firm's original projections were materially inaccurate. In rejecting Delta's further contention that it reasonably relied to its detriment on the expectation that it would be allowed to retain the benefits of the exception relief which it received during 1975, the FEA referred to several occasions on which it had stated that it intended to review the exception relief granted to small refiners during 1975 and to make appropriate adjustments.

Finally, the FEA held that equity considerations strongly led to the conclusion that stay relief should be denied. The FEA pointed out that Delta obtained nearly $4.6 million in excessive benefits from other refiners on the basis of inaccurate financial projections which it furnished and, after an extensive proceeding in which Delta participated, the determination was reached that the firm was not entitled to retain those funds. In view of these considerations, the FEA concluded that it would be grossly unfair to permit Delta to continue to use funds which it erroneously obtained from other refiners. The Delta Application for Stay was accordingly denied.

Pester Refining Co.; El Dorado, Kans.; FES-3376; Crude Oil, Refined Petroleum Products

Pester Refining Company requested that the application to it of certain provisions of the FEA Mandatory Petroleum Allocation and Price Regulations be stayed pending a determination of the firm's Application for Exception. According to the Pester submission, the firm proposed to acquire a refinery and related marketing assets located in El Dorado, Kansas owned by American Petrofina, Inc. (Fina). In considering the stay request,

the FEA concluded that the *status quo ante* would not be preserved by the approval of a stay since Pester would thereby effectively be permitted to consummate the transfer of the El Dorado refinery immediately. The FEA noted that this result would not be appropriate since the transfer of the refinery would become effective at a time when potentially aggrieved parties have not had an opportunity to comment on the stay request and the matter has not been fully considered by the FEA. Finally, the FEA found that Pester's claims that it will incur an irreparable injury in the event that a stay is denied were entirely speculative and unsubstantiated. The FEA noted that any injury that Pester might incur if the stay request were denied would be a direct consequence of Pester's and Fina's own business decision to attempt to consummate the proposed refinery acquisition on November 30, 1976 only 14 days after the parties filed their Application for Exception with the FEA. The FEA also noted that, even if Pester had substantiated its claim that it would incur significant hardships if stay relief were denied, the FEA must consider the effect which the approval of stay relief would have on other persons, and in this case the business activities of all the firms which purchase or sell products from or to the refinery could be severely disrupted by the approval of stay relief. Accordingly, the Application for Stay was denied.

Rock Island Refining Corp.; Indianapolis, Ind.; FES–0057; Crude Oil

Rock Island Refining Corporation requested a stay of a Decision and Order which was issued to the firm on November 5, 1976 directing it to purchase additional entitlements at a value of $2,642,065 during the period November 1976 through October 1977 in order to offset the excessive benefits which the FEA found the firm had obtained from exception relief provided to it during 1975. *Beacon Oil Co., et al.*, 4 FEA Par. 87,024 (November 5, 1976). In considering Rock Island's stay request, the FEA rejected the firm's contention that it would experience an irreparable injury simply because it would have to record the entire entitlement obligation specified in the November 5 Order as a charge against its current earnings in its financial statements for the fiscal year ending November 30, 1976. The FEA emphasized that Rock Island had not indicated how such an accounting entry would in any way affect its refinery operations. The FEA also noted that complex issues of statutory construction were raised by Rock Island's contention that the provisions of the November 5 Order which impose entitlement purchase obligations contravene Section 403 of the Energy Policy and Conservation Act of 1975. Since Rock Island did not cite any legislative history which might support its interpretation, the FEA found that the firm had failed to demonstrate a substantial likelihood that it would prevail on appeal. The FEA further concluded that Rock Island had failed to make a substantial *prima facie* showing that it would ultimately succeed on the merits of its contention that the November 5 Order contains various errors of fact with respect to the firm's historical profit margin, historical return on invested capital, and other financial indicia. Rock Island's request for a stay was therefore denied.

The Standard Oil Co.; Cleveland, Ohio; FES 0056; Crude Oil

On August 12, 1976, the Deputy Assistant Administrator for Compliance of the FEA issued a Remedial Order to the Getty Oil Company. A portion of that Remedial Order concerns crude oil transactions which occurred between Getty and The Standard Oil Company (Sohio) during the period October 1973 through October 1974. According to the Remedial Order, Getty sold 25,000 barrels per day (BPD) of predominantly old domestic crude oil to Sohio, and, in return, Sohio sold 25,000 BPD of foreign crude oil to Getty. The Remedial Order found that Sohio treated the crude oil transactions as an exchange and accordingly accounted for the domestic crude oil which it received from Getty at the price at which Sohio acquired the foreign crude oil while Getty had improperly treated the crude oil transactions as independent purchases and sales. Since Getty should have treated the transaction as an exchange the Remedial Order concluded that the transfer of old oil by Getty in return for higher-valued foreign crude oil from Sohio constituted the carging of a price by Getty which exceeded the ceiling price determined under 6 CFR 150.34 and 10 CFR 212.73. Getty was directed to refund to Sohio the difference between the value of the foreign crude oil which it received from Sohio and the applicable ceiling price for the domestic crude oil transferred to Sohio. In order to ensure that the refunds which Getty is required to make to Sohio are passed through to Sohio's purchasers of covered products, the Deputy Assistant Administrator for Compliance also issued an Ancillary Order to Sohio pursuant to the provisions of 10 CFR 205.195(b). In the present proceeding, Sohio requested that the Ancillary Order be stayed until 60 days after the final resolution of the Appeal which Getty has filed from the Remedial Order.

In Paragraph (1) of the Ancillary Order Sohio is directed to report detailed monthly cost and volume data regarding the Getty-Sohio crude oil transactions. Paragraph (3) of the Ancillary Order directs Sohio to submit a statement of alternative remedy which could be implemented in order to pass through the refunds. In considering the request for stay, the FEA noted that Sohio did not allege that it would incur an irreparable injury if the stay were denied. The FEA also found that Sohio failed to substantiate its assertion that the denial of a stay would result in a more immediate serious hardship or gross inequity to Sohio than the beneficiaries of the refunds. With respect to the information requested in Paragraph (1) of the Ancillary Order, the FEA concluded that Sohio made no showing that the effort which it would expend in compiling and reporting that information would be so inordinately burdensome in view of the public interest involved as to warrant a stay of the provision. The FEA also rejected Sohio's contention that a stay is warranted because Sohio would prevail on the merits of its Appeal. In view of the probable magnitude of the Getty violation, the complexities of the FEA refiner price regulations and the fact that certain products have recently been exempted from the FEA regulatory program, the FEA concluded that there is a substantial public interest which must be protected by designing a proper remedy in this case. The FEA therefore concluded that Sohio failed to satisfy the criteria for a stay which are set forth in Section 205.125(b). However, it was determined that good cause exists for the approval of an extension of time in which Sohio must comply with the provisions of the Ancillary Order.

Time Oil Co., Los Angeles, Calif., FES–3441; Crude Oil

Time Oil Company filed an Application for Stay of the provisions of 10 CFR 212.83. The Application for Stay, if granted, would permit the firm to treat the increased crude oil costs which the firm anticipates that it will incur in purchasing approximately 270,000 barrels of Indonesian crude oil during the first week of December 1976 as if the cost increases had been incurred during the month of November 1976. In considering Time's request, the FEA found that Time had failed to provide any financial material which would indicate that the inability of the firm to pass through the increased crude oil costs until the month of January 1977 would lead to a serious financial hardship. The FEA further held that, in view of the uncertainty of Time's future supply situation, it would be inappropriate to conclude that Time would be permanently deprived of the revenues involved in the proceeding if its request for stay were denied. With respect to Time's further contention that it would be unable to recover certain costs which it incurred in November in the absence of a stay, the FEA found that Time itself had stated that it incurred the costs with the sole intention of reflecting the costs in its December selling price and the firm submitted no material which indicates that it was unable to adhere to that procedure. The Application for Stay was therefore denied.

Zenith Oil Co., Inc.; Minneapolis, Minn.; FES–1047; No. 2 Heating Oil

Zenith Oil Company, Inc. requested that a Remedial Order which was issued to the firm on October 28, 1976 be stayed pending a final determination of the firm's Appeal from that Order. In the Remedial Order, the FEA determined that Zenith had sold No. 2 heating oil at price levels which were in excess of the maximum levels permitted by the provisions of 6 CFR 150.359 and 10 CFR 212.93 and consequently Zenith was directed to issue credit memoranda to the customers which it overcharged. In addition, Zenith was directed to maintain its current selling price for No. 2 heating oil to each of these customers until the refund to that customer has been completed. In considering the contentions raised by Zenith that the Remedial Order should be stayed, the FEA applied the principles previously established in *General Crude Oil Co.*, 3 FEA Par. 85,010 (June 25, 1976), *modified*, 3 FEA Par. 85,010 (July 8, 1976), and concluded that a stay should be granted with regard to the refund provisions of the Remedial Order. The FEA also stayed the provisions of the Remedial Order which specify the maximum permissible price which Zenith may charge while making refunds, since those provisions are intended to operate in concert with the refund provisions of the Remedial Order. The FEA further concluded, however, that in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Zenith's establishing an escrow account into which it places the amount of the refunds contemplated by the Remedial Order.

REQUEST FOR MODIFICATION OR RESCISSION

Atlantic Richfield Co., Los Angeles, Calif., FMR–0059; Lessors

Atlantic Richfield Company (Arco) filed an Application for Modification or Rescission of a Remedial Order issued to it by the Director of Compliance and Enforcement of the FEA Region IX on March 6, 1975. In the Remedial Order, FEA Region IX found that Arco had charged rentals in excess of the base rent permitted under the provisions of 6 CFR 150.360(b) and 10 CFR 212.103 for Riley's Arco Truckstop, Inc. located in Yuma, Arizona (Riley). In its Application for Modification or Rescission, Arco requested that the FEA rescind that portion of the Remedial Order which required it to refund the difference between the rent actually collected and the base rent for the period subsequent to April 30, 1974. In support of its request, Arco contended that the Remedial Order had been rendered void by a decision of the Temporary Emergency Court of Appeals in *Shell*

Oil Co. v. Federal Energy Admin., 527 F.2d 1243 (Em. App. 1975). In evaluating Arco's contention, the FEA reexamined the TECA and District Court opinions in the *Shell* case and the record in those proceedings. On the basis of that analysis the FEA concluded that in view of the equities involved and the FEA's statutory responsibility to protect the economic viability of small independent marketers, the *Shell* determination should be regarded as having only prospective effect. Arco's Application for Modification or Rescission was accordingly denied.

REQUEST FOR SPECIAL REDRESS

Intercoastal Marine Supplies; Washington, D.C., FEA–0895, FSG–0026, FSG–0027, FSG–0028; Diesel Fuel

Intercoastal Marine Supplies appealed from an Assignment Order which the FEA Regional Office in Dallas, Texas (FEA Region VI) issued to Gulf Outlet and Marine Supply, Inc. (Gulf Outlet) on June 4, 1976. In the June 4 Order, FEA Region VI directed the Murphy Oil Corporation (Murphy) to supply Gulf Outlet with 8,633,730 gallons of diesel fuel per year. Intercoastal also submitted to the FEA Office of Private Grievances and Redress three Petitions for Special Redress which concern the assignment of diesel fuel to Gulf Outlet by FEA Region VI. In its Appeal, Intercoastal alleged that the June 4 Order was defective. However, since middle distillates (including diesel fuel) were specifically exempted from the provisions of the FEA Regulations effective July 1, 1976, all FEA Orders which were issued prior to that date affecting those products, including the June 4 Order, ceased to have any prospective effect. Accordingly, the FEA determined that the prospective remedies which Intercoastal requested in its Appeal were not applicable under existing regulations and dismissed the Appeal as moot. Intercoastal also submitted three Petitions for Special Redress in which it requested that the FEA investigate various alleged irregularities which occurred during the processing of Gulf Outlet's Application for Assignment. In considering Intercoastal's Petitions, the FEA found that Intercoastal had failed to provide any information to demonstrate that its base period supplier, the Gulf Oil Company, had illegally forced Intercoastal to accept changes in its credit terms during 1973, 1974 and 1975, or that Gulf had illegally withdrawn as a supplier of diesel fuel from the New Orleans, Louisiana market area during that period. The FEA also determined that Intercoastal failed to support its claims that Murphy had discriminated against Intercoastal by refusing to supply it with diesel fuel during the same time period in which it supplied Gulf Outlet and that Murphy and Gulf Outlet consciously cooperated to obtain an unjustifiably large allocation of diesel fuel. Intercoastal's Petitions for Special Redress were therefore denied.

DISMISSALS

The following submission was dismissed following a statement by the applicant that the relief requested was no longer needed:

K.L.M. Oil Co.; Long Beach, Calif.; FEE–3236

The following submissions were dismissed for failure to correct deficiencies in the firm's filing as required by the FEA Procedural Regulations:

Carroll Production; Drumright, Okla.; FEE–3340

Garland Petroleum Co., Inc.; Cumberland, Md.; FEA–1028

The following submission was dismissed on the grounds that the submission did not meet the criteria applicable to an Application for Modification or Rescission:

Standard Oil Co. of Ohio; Cleveland, Ohio; FMR–0062

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77-2765 Filed 1-25-77;9:43 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 13 through December 17, 1976

Notice is hereby given that during the week of December 13 through December 17, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Bryant Oil Co.; Huntington Park, Calif.; FEA–1045; Motor Gasoline

Bryant Oil Company (Bryant) appealed from a Decision and Order which the FEA had issued to it denying an Application for Exception which it had previously submitted from the provisions of 10 CFR 211.9. *Bryant Oil Co.*, 4 FEA Par. 83,156 (October 22, 1976). In its Appeal, Bryant requested the FEA to reverse the previous determination and assign to the firm a new, lower-priced supplier of motor gasoline which would replace one of its base period suppliers, Lion Oil Company (Lion). Bryant did not challenge the validity of the earlier determination, but rather contended that economic conditions in its market area had changed so substantially since the issuance of the October 22 Decision as to warrant a reversal of that Decision. In support of this contention, Bryant presented recent data purporting to show that the price which Lion charged Bryant for motor gasoline exceeded the prices which Bryant's competitors paid to their motor gasoline suppliers. The FEA found, however, that the material submitted by Bryant did not reveal a significant disparity between the price charged by Lion for motor gasoline and the average price charged for motor gasoline in Bryant's market area. The FEA therefore concluded that the firm had failed to substantiate its claim that economic conditions in its market area and altered materially since the issuance of the October 22 Decision. Accordingly, the Appeal was denied.

C. D. Hollingsworth and Associates; Natchez, Miss.; FEA–0954; Crude Oil

C. D. Hollingsworth and Associates (Hollingsworth) filed an Appeal from a Decision and Order issued to it by the FEA denying a previous Application for Exception which the firm had filed from the provisions of 10 CFR, Part 212, Subpart D. *C. D. Hollingsworth & Associates*, 4 FEA Par. 83,073 (August 31, 1976). The Hollingsworth Appeal, if granted, would have permitted the firm to sell at upper tier ceiling prices additional quantities of crude oil produced from certain wells in the South Providence Field, Franklin County, Mississippi. In its Appeal, Hollingsworth asserted that the amendments to Subpart D which were promulgated on February 1, 1976 have the effect of reducing the volume of crude oil which it is entitled to sell at upper tier ceiling prices. Hollingsworth argued that this result deprives it of the full benefits of the investment which the firm has made in its properties and also contravenes the underlying purpose of the February 1 amendments. In considering the firm's arguments, the FEA noted that, since Hollingsworth had achieved an initial return of 55 percent on its investment, it did not appear to be subject to a disproportionate burden or gross inequity as a result of the regulatory amendments to Subpart D. With respect to the firm's other argument, the FEA determined that Hollingsworth had failed to furnish any evidence that its inability to sell as much crude oil at upper tier ceiling prices as it would have sold in the absence of the February 1 regulatory amendments was in any way contrary to the intent of those amendments. The Hollingsworth Appeal was therefore denied.

Consumers Fuel Co., Inc.; Martinsburg, W. Va.; FEA–0946; Middle Distillates and Residual Fuel Oil

Consumers Fuel Company, Inc. (Consumers) appealed from a Remedial Order which had been issued to it by FEA Region III on June 23, 1976. The Remedial Order found that from November 6, 1973 through July 16, 1974 Consumers sold kerosene and No. 2, 4, 5, and 6 fuel oils at prices which were in excess of the maximum levels specified in 6 CFR 150.359(c)(1) and 10 CFR 212.93(a). The Remedial Order directed Consumers to refund the previous overcharges and refrain from charging prices in excess of lawful levels. In considering Consumers' Appeal, the FEA determined that Consumers' reliance on regulations which were no longer effective did not constitute a justifiable basis for its noncompliance with applicable regulatory obligations. The FEA also found that Consumers had failed to show that any price reductions subsequent to July 16, 1974 were made for the sole purpose of making restitution of previous overcharges or that the prices subsequently charged differed from those which the firm would otherwise have charged under the existing market conditions. The FEA therefore determined that Consumers should not be permitted to offset alleged undercharges against the overcharges specified in the Remedial Order. However, the FEA also determined that the Remedial Order failed to make essential findings of fact in support of its conclusion as required by *Koch Industries, Inc.*, 2 FEA Par. 89,589 (May 2, 1975). The FEA found that in the absence of the essential findings, including Consumers' May 15, 1973 weighted average price for each product to each class of purchaser and weighted average unit cost for each product in inventory, Consumers is unable to comply with the Remedial Order, to verify its accuracy, or to submit a meaningful Appeal. The FEA therefore rescinded the Remedial Order and remanded the matter to the Regional Administrator of FEA Region

III for further proceedings in accordance with the principles set forth in the Decision.

Eddy Refining Co.; Houston, Tex.; FEA–0964; Diesel Fuel

The Eddy Refining Company (Eddy) filed an Appeal from a Decision and Order which the FEA issued to it denying a previous request for exception relief which Eddy had filed from the provisions of 10 CFR, Part 212, Subpart E. *Eddy Refining Co.*, 4 FEA Par. 83,005 (July 16, 1976). The exception request, if granted, would have permitted Eddy to adjust its May 15, 1973 selling price and thereby both retroactively and prospectively increase its maximum allowable price for No. 2–D diesel fuel. The approval of retroactive exception relief would reduce or eliminate Eddy's liability to refund alleged overcharges in its sales of diesel fuel from September 1973 through June 1975. In the determination which it issued in connection with the Eddy exception proceeding the FEA found that recent amendments to the Mandatory Petroleum Price Regulations exempting middle distillates such as No. 2–D diesel fuel from price controls rendered Eddy's request for prospective relief moot. With respect to retroactive relief, the FEA determined that Eddy had failed to explain its lengthy delay in requesting exception relief, that the month of May 1973 reasonably reflected its operations prior to the promulgation of FEA Price Regulations, and that Eddy's profitable financial and operating posture in recent years contradicted the firm's claim that it would experience a severe and irreparable injury if it were required to make refunds to its diesel fuel customers. Accordingly, Eddy's Application for Exception was denied. In its Appeal, Eddy reiterated the same arguments which it advanced in the prior proceeding and contended that it relied in good faith on erroneous advice from the IRS regarding the correct procedure to pre-notify the FEA of nonproduct costs to be passed through in the form of higher selling prices. The FEA noted that in a number of previous Decisions it had concluded that actions by a firm based upon informal oral discussions with FEA personnel do not constitute appropriate justification for the approval of retroactive exception relief. The Appeal was therefore denied.

McMahan Oil Co.; Easton, Md.; FEA–0901; No. 2–D Diesel Fuel Oil

McMahan Oil Company (McMahan) appealed from a Remedial Order which had been issued to it by FEA Region III on July 6, 1976. In the Remedial Order, the FEA found that McMahan had sold No. 2–D diesel fuel to the Easton Utilities Commission (Easton) from August 19, 1973 through April 4, 1974 at prices which exceeded the maximum permissible selling prices specified in 10 CFR 212.93(a). The Remedial Order directed McMahan to refund the previous overcharges plus interest. In considering the Appeal, the FEA found that contrary to McMahan's assertions both the freight charges which McMahan incurred to transport No. 2–D diesel fuel into its inventory and the firm's rental expenses for storage facilities were properly accounted for in the Remedial Order. The FEA also found that McMahan had failed to establish that its alleged price reductions after the period of the overcharges were made for the sole purpose of making restitution. Accordingly, the FEA concluded that it was reasonable to have determined that McMahan should not be permitted to offset those alleged price reductions against the overcharges. The Appeal filed by McMahan was therefore denied.

Mobil Oil Corp.; Los Angeles, Calif.; FEA–1011; Motor Gasoline

Mobil Oil Corporation appealed from a Decision and Order which the FEA issued to UCO Oil Company on June 11, 1976. *UCO Oil Co.*, 3 FEA Par. 83,219 (June 11, 1976). Pursuant to the June 11 Decision and Order, Mobil was assigned by FEA Region IX to supply motor gasoline to UCO. Since Mobil failed to file its Appeal in a timely manner or demonstrate good cause for the impermissible delay, the Appeal was summarily denied in accordance with the provisions of 10 CFR 205.106(b)(1)(i).

Union Oil Co.; Los Angeles, Calif.; FEA–0947; Crude Oil

Union Oil Company of California appealed from a Decision and Order issued to it by the FEA denying the firm's request for exception relief from the provisions of 10 CFR Part 212, Subpart D. *Union Oil Co. of California*, 4 FEA Par. 83,039 (August 6, 1976). The Appeal, if granted, would have reversed the previous Order and permitted Union to determine the price of crude oil which it produces from the Trading Bay Unit in Alaska without regard to the current cumulative deficiency which has accrued on that property as a result of an explosion on the Unit's platform. In denying the Appeal, the FEA found that the August 6 Decision to deny exception relief must be sustained as correct since Union failed to challenge the Decision's underlying factual determination that the firm had sufficient economic incentive to restore production from the Trading Bay Unit even in the absence of exception relief. The FEA further noted that Union's Appeal was based to a large extent on the contention that the cumulative deficiency rule in 10 CFR 212.72 should be modified through exception relief so that it would not apply in any *force majeure* situation. The FEA observed that such a contention involved a broad issue as to the most desirable means of attaining national policy objectives and would be more appropriately resolved through rulemaking procedures.

Varibus Corp.; Beaumont, Tex.; FEA–1003; No. 2 Fuel Oil

Varibus Corporation appealed from a Remedial Order which was issued to the firm by Region VI of the FEA on September 20, 1976. The Order found that Varibus had sold fuel oil on two occasions during October 1973 to unaffiliated companies at prices which exceeded the maximum permissible selling prices and directed Varibus to refund with interest the revenues generated by the overcharges. In its Appeal Varibus contended that since its sales to unaffiliated entities were made under unusual circumstances, it is not consistently engaged in the business of reselling covered products and, thus, is not a reseller for purposes of the FEA Price Regulations. The FEA noted, however, that it had concluded in two recent Decisions that the applicability of the FEA Price Regulations to a particular sales transaction depends upon the nature of that transaction rather than the nature of the business customarily engaged in by the firm. With respect to the two sales which were the subject of the September 20 Remedial Order, the FEA determined that, since Varibus had purchased a covered product and resold it without substantially changing its form to two customers who were not ultimate consumers, the FEA was correct in concluding that Varibus was included within the regulatory definition of the term "reseller" and Varibus was therefore subject to the FEA Price Regulations governing sales by resellers. Accordingly, the Appeal was denied.

REQUESTS FOR EXCEPTION

Beacon Oil Co.; Hanford, Calif.; FEE–3379, Crude Oil

Beacon Oil Company (Beacon) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Beacon on June 8, 1976. That exception determination relieved the firm of its obligation to purchase entitlements during the period June through November 1976. *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976). In support of its exception request, Beacon submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Beacon's exception request the FEA determined that in the absence of exception relief, Beacon would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Beacon would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Beacon submitted a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1977 fiscal year beginning on January 1, 1977. Under the criteria set forth in *Beacon Oil Co., supra*, and *Delta Refining Co.*, 3 FEA Par. 83,275 (September 11, 1976), exception relief was therefore warranted. Accordingly, the FEA granted Beacon's Application for Exception relieving the firm of sufficient entitlement purchase obligations during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977, to permit Beacon to achieve its historical profit margin during the current fiscal year. However, the FEA noted in the Decision which it issued that the relief approved to Beacon would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Beacon will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial result which it achieves.

B. F. Goodrich Chemical Co.; Cleveland Ohio; FEE–3197; Propane

On September 20, 1976, B. F. Goodrich Chemical Company (Goodrich) filed an Application for Exception from the provisions of 10 CFR 211.10(g)(8)(i) which, if granted, would result in the issuance of an Order increasing the firm's base period use of propane. In support of its Application, Goodrich contended that Section 4(c) of the Emergency Petroleum Allocation Act (EPAA) required the FEA to provide for the allocation of propane to an industrial user if no substitute product was available. Goodrich further argued that its current requirements for propane exceeded its base period use of the product and therefore it is incurring a gross inequity because it is the only manufacturer of ethylene in the United States which relies completely on propane as a feed-

stock. In considering Goodrich's exception request, the FEA noted that the FEA allocation regulations were designed to achieve an appropriate balance of all nine policy objectives contained in subsection 4(b)(1) of the EPAA. The FEA therefore determined that Section 4(c) of the EPAA did not require the FEA to grant exception relief to Goodrich. Moreover, the FEA determined that Goodrich was not experiencing the type of gross disparity between its current requirements and its base period use of propane which would warrant exception relief. The FEA consequently concluded that Goodrich had not demonstrated that the provisions of Section 211.10(g)(8)(i) significantly and uniquely impeded its operations and accordingly denied the firm's exception request.

Champlin Petroleum Co.; Fort Worth, Tex.; FEE–3458 (Block 31), FEE–3459 (Dover-Hennessey), FEE–3460 (East Texas), FEE–3461 (Gulf Plains), FEE–3462 (Mayfield), FEE–3464 (Peoria), FEE–3465 (South Fullerton), FEE–3466 (Witcher); Natural Gas Liquid Products

Champlin Petroleum Company (Champlin) filed Applications for Exception from the provisions of 10 CFR 212.165, which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm had incurred at eight of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Champlin had made such a showing with respect to its eight gas plants and therefore granted Champlin appropriate exception relief with respect to those plants.

Cities Service Co.; Tulsa, Oklahoma; FEE–3332 (Mooreland), FEE–3333 (Panola), FEE–3334 (Red Fish Bay), FEE–3335 (Star Lacey), FEE–3336 (West World); Natural Gas Liquid Products

Cities Service Company (Cities) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at five of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that Cities had made such a showing with respect to its five gas plants and therefore granted Cities appropriate exception relief with respect to those plants for the period December 14, 1976 through June 30, 1977.

Clark Oil and Refining Corp.; Washington, D.C.; FEE–3214; Crude Oil

Clark Oil and Refining Corporation (Clark) filed an Application for Exception from the provisions of 10 CFR 212.83 which, if granted, would permit Clark to reduce its cost of crude oil in December 1976 to reflect a portion of the revenues which it received from the sale of entitlements in the months of October and November 1976. In its exception application, Clark asserted that its planned conversion of a catalytic cracking unit and the inspection and repair of the crude unit at the firm's Blue Island, Illinois, refinery reduced runs at the refinery and have necessitated adjustments to the firm's scheduled purchases and receipts of crude oil during the last three months of 1976. The firm anticipated that, as a result of these adjustments, it would receive revenues from the sale of entitlements during November 1976 which would be disproportionately large as compared to the aggregate cost of the crude oil which the firm intended to purchase during that month. In considering the firm's exception application, the FEA concluded that that the financial data which Clark submitted failed to support the firm's contention that it would incur a serious financial hardship unless exception relief were approved. The FEA found that, even without exception relief, the firm would achieve significant profits in 1976 and 1977 and that Clark's own projections indicated that in the absence of exception relief the firm would recover all of the increased costs which it incurred during the last three months of 1976. The Clark request for exception was accordingly denied.

Cleary Petroleum Corp.; Payne County, Okla.; FEE–2783; Crude Oil

Cleary Petroleum Corporation (Cleary) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to charge upper tier ceiling prices for the crude oil which it produces from the March Skinner Sand Unit located in Payne County, Oklahoma (the March Unit). Cleary requested that the exception relief be made retroactive to November 1973. In its exception application, Cleary contended that it does not have the economic incentive to make certain capital expenditures which are necessary for the continuation of a waterflood project on the March Unit if it must continue to charge the lower tier ceiling prices specified in the FEA Regulations. In considering Cleary's exception request, the FEA found that Cleary's financial and production projections for the property demonstrated that the proposed investment would generate a substantial net cash flow during its first year of operation, even in the absence of exception relief. Based upon the precedents established by the FEA in several recent cases involving similar circumstances, the FEA determined that the firm's projected return on its investment should provide it with an adequate economic incentive to make the proposed investment in the waterflood project. Accordingly, the firm's request for both prospective and retroactive exception relief was denied.

Community Feed Stores; Eastlongmeadow, Mass.; FEE–3274; No. 2 Heating Oil

Community Feed Stores (Community) filed an Application for Exception from the requirement that it file a "No. 2 Heating Oil Supply/Price Monitoring Report," FEA Form P112–M–1. In considering the exception application, the FEA determined that the firm had failed to submit any financial material in support of its claim that it would incur significant expenses in providing the information required by the form. The FEA also concluded that Community failed to demonstrate that the inconvenience of supplying the information outweighs the benefits to be derived from the use of the aggregate data which the FEA collects from a sample of firms, including Community, as to the supply and price of No. 2 heating oil. Community's request for exception relief was therefore denied.

Confederated Tribes of the Warm Springs Reservation of Oregon; Warm Springs, Oreg.; FEE–3111; Motor Gasoline

The Confederated Tribes of the Warm Springs Reservation of Oregon (Confederated Tribes) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the assignment of a new supplier to replace their base period supplier, Pugh Oil Company (Pugh). In their submission the Confederated Tribes claimed that Pugh had failed to maintain adequate supplies of motor gasoline at the Reservation Garage and had thereby jeopardized vital public services performed by the Confederated Tribes. In considering the exception application, the FEA determined that the Confederated Tribes had demonstrated that motor gasoline shortages had occurred from time to time on the Reservation but that there was no evidence that these shortages had in any way disrupted the performance of essential public services. Furthermore, the FEA found that the record in the proceeding indicated that the Confederated Tribes had contributed to the occasional gasoline shortages at the Reservation by failing to take reasonable measures to alleviate their supply difficulties. The FEA therefore determined that the Confederated Tribes had failed to demonstrate that the maintenance of their base period supplier purchaser relationship with Pugh resulted in a serious hardship or gross inequity. Accordingly, the exception request was denied.

Diamond Shamrock Corp.; Amarillo, Tex.; FEE–2761; Refined Petroleum Products

Diamond Shamrock Corporation (Shamrock) filed an Application for Exception from the provisions of 10 CFR 211.83. The exception request, if granted, would permit Shamrock to allocate its increased crude oil costs to motor gasoline in proportion to the volume of motor gasoline sold by the firm for purposes of calculating its maximum allowable prices. In considering Shamrock's exception request, the FEA found that Shamrock had, during February of 1976, elected to allocate its increased crude oil costs to its products in proportion to its refinery yield using the "R" allocator rather than its product sales using the "V" allocator. As a result, the effect of the regulatory amendments which accompanied the deregulation of No. 2 fuel oils (41 FR 24516; June 16, 1976) had been to preclude the firm from reallocating crude oil cost increases to motor gasoline. Since the FEA's intent in permitting refiners to elect the "R" allocator was to ensure a more representative volumetric allocation of the increased cost of crude oil in the maximum allowable price of each product, the FEA determined that under the particular circumstances presented in this case Shamrock's use of the "R" allocator resulted in a gross inequity to the firm. The FEA therefore granted Shamrock exception relief which permitted it to allocate those increased costs which were attributable to No. 2 fuel oils exchanged for motor gasoline to its sale of motor gasoline. The FEA also determined that under the facts presented, compelling reasons existed for granting exception relief to Shamrock on a retroactive basis. The FEA therefore granted the firm exception relief retroactive to May 1, 1976.

Dillman Oil Recovery, Inc.; Robinson, Ill.; FEE–2763; Crude Oil

Dillman Oil Recovery, Inc. (Dillman) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would relieve the firm of any obligation to purchase entitlements beginning with the month of December 1976. In support of its exception request, Dillman submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for the

fiscal year. In considering Dillman's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Dillman would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historic levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Dillman exception relief reducing by $20,980 per month the firm's obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Dillman would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Dillman will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Edgington Oil Co. (New Edgington); Long Beach, Calif.; FEE-3281; Crude Oil

Edgington Oil Company (New Edgington) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program), which, if granted, would result in an extension of the exception relief which the FEA originally granted to Edgington Oil Company on June 21, 1976. That exception determination relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Edgington Oil Co.*, 3 FEA Par. 83,240 (June 21, 1976). On September 21, 1976, the FEA issued a Decision and Order in response to a joint Application for Exception filed by Edgington Oil Company and New Edgington which the firms had submitted following the transfer by Edgington of its entire refinery operation and total assets to New Edgington. In making a determination with respect to that matter, the FEA transferred to New Edgington the exception relief which had previously been granted to Edgington in the June 21 Order. *Edgington Oil Co.-New Edgington Corp.*, 4 FEA Par. 83,102 (September 21, 1976). In support of its current exception request, New Edgington submitted projected financial statements for its current fiscal year ending June 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering New Edgington's request, the FEA determined that in the absence of exception relief, New Edgington would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which New Edgington would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976), and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1976), an extension of exception relief was warranted. Accordingly, the FEA granted New Edgington an exception relieving the firm of its obligation to purchase entitlements valued at $1,240,238 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to New Edgington would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and would be further evaluated at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and New Edgington will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Husky Oil Co. of Delaware; Denver, Colo.; FEE-3231; Crude Oil

Husky Oil Company of Delaware (Husky) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Husky on June 21, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Husky Oil Co. of Delaware*, 3 FEA Par. 83,225 (June 21, 1976). In support of its current exception request, Husky submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Husky's request, the FEA determined that in the absence of exception relief, Husky would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Husky would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Husky an exception relieving the firm of any obligation to purchase entitlements during the six-month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Husky would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Husky will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Kathol Petroleum, Inc.; Kearney, Mo., FEE-3079, FEE-3373, Natural Gas Liquids and Products

Kathol Petroleum, Inc. (Kathol) filed two Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Kathol to increase the selling prices of natural gas liquids and natural gas liquid products which it charges to reflect non-product cost increases at its Indian Wells natural gas processing plant retroactive to August 1, 1973 and on a prospective basis. In considering Kathol's request for prospective exception relief, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids and the $.005 per gallon passthrough for natural gas liquid products which are permitted under Section 212.166. The FEA found that Kathol had made such a showing and therefore granted Kathol exception relief with respect to its Indian Wells gas plant for the period December 10, 1976 through February 28, 1977. With respect to Kathol's request that relief be granted retroactive to August 1, 1973, the FEA determined that the firm made no showing that it would be irreparably injured in the absence of retroactive relief nor did it present any other compelling reasons for the approval of such relief. The FEA therefore denied the firm's request for retroactive exception relief.

Kern County Refinery, Inc.; Bakersfield, Calif.; FEE-3287; Crude Oil

Kern County Refinery, Inc. (Kern) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Kern on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Kern County Refinery, Inc.*, 3 FEA Par. 83,226 (June 18, 1976). In support of its current exception request, Kern submitted projected financial statements for its current fiscal year ending March 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Kern's request, the FEA determined that in the absence of exception relief, Kern would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Kern would incur during its current fiscal year, the firm's profit margin would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Kern's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Kern would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Kern will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Little America Refining Co.; Washington, D.C.; FEE-2709; Crude Oil, Refined Products

Little America Refining Company (Larco) filed a submission with the Federal Energy Administration requesting administrative relief in connection with the acquisition by its subsidiary, the Sinclair Refining Company (Sinclair), of the refining and marketing assets previously owned by Pasco, Inc. Larco

acquired and began to operate those assets on July 1, 1976. In considering the Larco submission, the FEA determined that, in order to avoid the possibility that supply disruptions and dislocations would occur, Pasco's obligations to supply allocated products to its base period purchasers should be terminated and Larco should be assigned to supply those customers on a permanent basis. The FEA also determined that, since the Larco firm acquired Pasco's entire refining and marketing business, under the provisions of 10 CFR 211.11(d) Pasco's rights to receive allocations of petroleum products from its base period suppliers are deemed to have been transferred to the Larco firm concurrent with Larco's acquisition of the Pasco assets. Consequently, the FEA held that Larco does not require exception relief in order to receive as of right allocated products from Pasco's former base period suppliers. In considering Larco's request that it be permitted to utilize the banks of unrecovered increased costs accrued by Pasco in calculating its maximum allowable prices, the FEA observed that the Pasco assets had been the subject of a federal antitrust decree and Larco had indicated that in approving Pasco's sale of the assets the Federal Trade Commission had expressed concern that the refining and marketing activities previously conducted by Pasco continue to operate in a vigorous, competitive manner and that the customers who relied on Pasco not be adversely affected by the sale. The FEA found that, if Larco were afforded the opportunity to utilize the unrecovered increased costs incurred in the operation of the Pasco assets, its ability to ensure that the former Pasco operations function as a strong, competitive force would certainly be enhanced. The FEA also found that the position of Pasco's former customers would not be significantly affected by the approval of Larco's request since if Pasco had not sold the assets if would have been permitted to pass through its banked costs subject to the limitations specified in the FEA Regulations. In addition, by permitting Larco to utilize Pasco's banked costs the possibility that price fluctuations and distortions would occur would be mitigated. However, the FEA further determined that if Larco were permitted to base its maximum allowable prices to former Pasco customers only on its lower May 1973 costs and were also permitted to pass through the Pasco banked costs, Larco would receive an unwarranted benefit at the expense of the former Pasco customers. In order to prevent this result from occurring, the FEA conditioned the approval of Larco's request to utilize Pasco's banked costs on the requirement that Larco average its May 1973 costs with Pasco's May 1973 costs in computing its maximum allowable prices. Additionally, the FEA indicated that Larco would not be permitted to reflect the cost of any inventories which it purchased from Pasco in its selling prices in order to avoid a situation in which Larco would be able to recover the same costs twice.

Louis M. Mai Operations; Russell, Kans.; FEE–2839; Crude Oil

Louis M. Mai Operations (Mai) filed an Application for Exception from the provisions of 6 CFR, Part 150 and 10 CFR, Part 212, Subpart D. Mai's request, if granted, would permit the firm to sell the crude oil produced from its Sutton lease in November 1973 and the crude oil produced from its Johnson lease during the period November 1973 through December 1974 without regard to the ceiling price rule set forth in 6 CFR 150.354 and 10 CFR 212.73. In its exception application, Mai contended that the two wells on the Johnson lease should be considered as multiple completion wells. Mai indicated that if these wells were classified as multiple completion wells for the purpose of calculating the property's average daily production, the Johnson lease would qualify as a stripper well property for the month of November 1973 and calendar year 1974. In considering this contention, the FEA noted that before the issue of the propriety of retroactive exception relief may be addressed, a firm must make a showing that it is entitled to prospective exception relief. The FEA found that Mai had failed to make this initial showing since the firm had not demonstrated that the application of the multiple completion well ruling, Ruling 1975–12, significantly or uniquely impeded Mai's operations or frustrated the objectives which the Ruling was designed to achieve. Mai also contended that it should not be held liable for any overcharges which it obtained from the Johnson and Sutton leases during November 1973 since the firm had made a good faith effort to comply with the regulations governing the pricing of crude oil during a period of time in which some confusion existed as to the manner in which the regulatory requirements would be applied. The FEA found that this contention was unpersuasive inasmuch as Mai had failed to establish that the regulations governing crude oil pricing were unclear as a matter of law, and Mai's failure to familiarize itself with those regulatory requirements did not provide a basis for the approval of exception relief. Finally, Mai requested that the FEA determine that the Johnson lease was in fact a stripper well property in November 1973. The FEA noted that Mai appeared to be challenging a Notice of Probable Violation (NOPV) which had been issued to the firm and that the exceptions process is not the proper means by which a firm responds to a NOPV or secures a determination that it is applying the regulatory requirements in a proper manner. The Application for Exception which Mai filed was accordingly denied.

Lunday-Thagard Oil Co.; South Gate, Calif.; FEE–3229; Crude Oil

Lunday-Thagard Oil Company (Lunday-Thagard) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Lunday-Thagard on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *Lunday-Thagard Oil Co.*, 3 FEA Par. 83,228 (June 18, 1976). In support of its current exception request, Lunday-Thagard submitted projected financial statements for its current fiscal year ending June 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Lunday-Thagard's request, the FEA determined that in the absence of exception relief, Lunday-Thagard would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Lunday-Thagard would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Lunday-Thagard's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Lunday-Thagard would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Lunday-Thagard will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

M. J. Mitchell; Dallas, Tex.; FEE–3289; Crude Oil

M. J. Mitchell (Mitchell) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of the exception relief previously granted to Mitchell and would permit the firm to continue to sell a portion of the crude oil produced from the Mitchell State Minnelusa Sand Unit in Campbell County, Wyoming (the Unit) for the benefit of the working interest owners at upper tier ceiling prices. *M. J. Mitchell*, 3 FEA Par. 83,270 (July 8, 1976). In considering Mitchell's exception request, the FEA determined that the Unit was continuing to experience increased operating costs and the working interest owners lacked an economic incentive to maintain the production and sale of the crude oil from the Unit at lower tier ceiling prices. In view of this determination and on the basis of the operating data which the firm had submitted, the FEA concluded that the exception relief previously granted should be extended to permit Mitchell to sell 21.612 percent of the crude oil produced from the Mitchell State Minnelusa Sand Unit for the benefit of the working interest owners at upper tier ceiling prices for an additional six month period.

Mobil Oil Corp.; New York, N.Y.; FEE–3418 (Cameron), FEE–3419 (Cotton Valley), FEE–3420 (Cow Island-Riverside), FEE–3421 (Delhi), FEE–3422 (Elwood), FEE–3423 (Gulf-Knox), FEE–3424 (Heyser), FEE–3425 (Postle Hough), FEE–3426 (R. M. Stephens), FEE–3427 (Seeligson), FEE–3428 (South Sarepta), FEE–3429 (Union-Adena); Natural Gas Liquids and Products

Mobil Oil Corporation (Mobil) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 12 of its natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids which are permitted under Section 212.165. The FEA found that Mobil had made such a showing with respect to its 12 gas plants and therefore granted Mobil appropriate exception relief with respect to those plants for the period December 13, 1976 through June 30, 1977.

Mohawk Petroleum Corp., Inc.; Los Angeles, Calif.; FEE–3321; Crude Oil

Mohawk Petroleum Corporation, Inc. (Mohawk) filed an Application for Exception from the provisions of 10 CFR 211.67 (the

Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted the firm on June 17, 1976. *Mohawk Petroleum Corp.*, 3 FEA Par. 83,230 (June 17, 1976). In support of its exception request, Mohawk submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Mohawk's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Mohawk would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Mohawk submitted a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1977 fiscal year beginning on January 1, 1977. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Mohawk's Application for Exception relieving the firm of sufficient entitlement purchase obligations during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977, to permit Mohawk to achieve its historical profit margin during the current fiscal year. However, the FEA noted in the Decision which it issued that the relief approved would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The decision further noted that an adjustment will be made and Mohawk will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Navajo Refining Co.; Artesia, N. Mex.; FEE–3400; Crude Oil

Navajo Refining Company (Navajo) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted the firm on November 17, 1976. *Navajo Refining Co.*, 4 FEA Par. ---- (November 17, 1976). In support of its exception request, Navajo submitted projected financial statements for its current fiscal year ending July 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Navajo's exception request the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Navajo would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historic levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Navajo's Application for Exception relieving the firm of any obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Navajo would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Navajo will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

W. H. Porter; Midwest City, Okla.; FEE–3087; Crude Oil

W. H. Porter (Porter) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would permit Porter to sell the crude oil produced from the Kirchmeir Lease (the Lease) at upper tier ceiling prices. In considering the exception application, the FEA found that Porter's production costs exceeded the price which he is permitted to charge for the crude oil which he sells and, consequently, Porter does not have an economic incentive to continue to operate the Lease. The FEA further found that if Porter abandoned the Lease, a substantial quantity of domestic crude oil would not be recovered. On the basis of the criteria which it applied in previous similar cases, the FEA concluded that exception relief should be granted and that Porter should be permitted to sell 42.52 percent of the crude oil produced from the Lease at upper tier ceiling prices for the benefit of the working interest owners.

Rock Island Refining Corp.; Indianapolis, Ind.; FEE–3209; Crude oil

Rock Island Refining Corporation (Rock Island) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlemnets Program) in which it requested that the exception relief granted to the firm on September 10, 1976 be extended for an additional period of time. *Rock Island Ref. Corp.*, 4 FEA Par. 83,086 (September 10, 1976). In the September 10 Decision, the FEA determined that exception relief should be granted to Rock Island which reduced its obligation to purchase entitlements during the six month period ending November 30, 1976. That determination was based on an application of the standards for exception relief from the Entitlements Program set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), to projections which Rock Island submitted as to its financial results and position under the Entitlements Program during the period April 1 through November 30, 1976. In the present proceeding Rock Island submitted actual financial data to replace certain of the projections which it previously furnished. In applying the standards for exception relief set forth in *Beacon* and *Delta* to Rock Island's current financial data the FEA determined that even without further exception relief from the Entitlements Program, the profit margin which Rock Island will attain during the April 1 through November 30, 1976 period will exceed the profit margin which the firm realized during its historical fiscal years 1968 through 1974. Since the *Beacon* and *Delta* standards were designed to prevent the purchase requirements of the Entitlments Program from impairing a small refiner's ability to operate at levels that are below its historical performance and the financial data which Rock Island submitted indicated that this situation would not occur in the absence of further exception relief, the firm's application for additional exception relief from the Entitlements Program was denied.

San Joaquin Refining Co.; Oildale, Calif.; FEE–3240; Crude oil

San Joaquin Refining Company (San Joaquin) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to San Joaquin on June 18, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. *San Joaquin Refining Co.*, 3 FEA Par. 83,234 (June 18, 1976). In support of its current exception request, San Joaquin submitted projected financial statements for its current fiscal year ending April 30, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering San Joaquin's request, the FEA determined that in the absence of exception relief, San Joaquin would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which San Joaquin would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted San Joaquin an exception relieving the firm of its obligation to purchase entitlements valued at $400,273 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to San Joaquin would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and San Joaquin will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

E. W. Sauder; Emporia, Kans.; FEE–3090; Crude oil

E. W. Sauder (Sauder) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would result in the classification as stripper well leases of two properties which Sauder owned and operated during the period November 1973 through December 1975. In considering Sauder's exception request, the FEA noted that in evaluating requests for retroactive exception relief, the FEA has consistently held that retroactive exception relief will be granted only if an applicant, in addition to satisfying the criteria applicable to prospective exception requests, demonstrates compelling reasons why retroactive exception relief is warranted or shows that it would experience an irreparable and severe injury in the absence of retroactive exception relief. After considering the financial data which Sauder submitted, the FEA concluded that Sauder had failed to satisfy the standards for retroactive exception relief. The FEA found that Sauder had not established that he would experience a severe and irreparable financial injury sufficient to imminently jeopardize the financial viability of his operations in the absence of retroactive excep-

tion relief, and accordingly denied Sauder's exception request.

Southland Oil Co.; Jackson, Miss.; FEE-3322; Crude oil

Southland Oil Company (Southland) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA granted to the firm on September 10, 1976. *Southland Oil Co.*, 4 FEA Par. 83,087 (September 10, 1976). In support of its exception request, Southland submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Southland's exception request, the FEA determined that in the absence of exception relief the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Southland would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Southland exception relief reducing by $994,663 per month the firm's obligation to purchase entitlements during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Southland would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Southland will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Standard Oil Co. of California; San Francisco, Calif.; FEE-3343 (Birch Creek), FEE-3344 (21E Booster), FEE-3345 (Calumet), FEE-3346 (Carpinteria), FEE-3347 (Colonia Booster), FEE-3348 (Gymric), FEE-3349 (Greeley System), FEE-3350 (Hagood), FEE-3351 (Huntington Beach), FEE-3352 (Indian Basin), FEE-3353 (Kermit), FEE-3354 (Laperouse), FEE-3355 (Lisbon Valley), FEE-3356 (Murphy Coyote), FEE-3357 (Reserve-No. Tejon), FEE-3358 (Red Wash), FEE-3359 (Sherman), FEE-3360 (Sivells Bend), FEE-3361 (So. Coles Levee), FEE-3362 (S. E. Marietta), FEE-3363 (Stevens Calidon), FEE-3364 (Swanson River), FEE-3365 (Wilson Creek), FEE-3366 (Yates); Natural gas liquid products

Standard Oil Company of California (SOCAL) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit the firm to increase the prices it charges to reflect non-product cost increases which the firm has incurred at 24 of its natural gas processing plants. In considering the Applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products which is permitted under Section 212.165. The FEA found that SOCAL has made such a showing with respect to 21 of the 24 plants and therefore granted SOCAL appropriate exception relief with respect to those plants. However, the FEA denied exception relief for the remaining three plants on the grounds that the non-product cost increases experienced at those plants were not materially in excess of $.005 per gallon.

Sunland Refining Corp.; Los Angeles, Calif.; FEE-3234; Crude oil

Sunland Refining Corporation (Sunland) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to Sunland on June 14, 1976 which relieved the firm of its obligation to purchase entitlements during the period April through September 1976. Sunland Refining Co., 3 FEA Par. 83,236 (June 14, 1976). In support of its current exception request, Sunland submitted projected financial statements for its current fiscal year ending December 31, 1976 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Sunland's request, the FEA determined that in the absence of exception relief, Sunland would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Sunland would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), an extension of exception relief was warranted. Accordingly, the FEA granted Sunland an exception relieving the firm of its obligation to purchase entitlements valued at $798,180 per month during the six month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Sunland would be reevaluated if the firm requested an extension of exception relief beyond May, 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Sunland will be required to purchase or sell entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

The Eagle Oil Co.; Columbus, Ohio; FXE-3469; Motor Gasoline

On September 27, 1976, the Federal Energy Administration granted an exception to The Eagle Oil Company on the grounds that the application of the provisions of 10 CFR 211.9 resulted in a serious hardship to the firm. *The Eagle Oil Co.*, 4 FEA Par. 83,121 (September 27, 1976). In that Order, the Regional Administrator for the FEA, Region V, was directed to assign Eagle a supplier or suppliers for the months of November and December 1976 whose price for motor gasoline was within the range of prices paid by major marketers for such product in Eagle's marketing area. The Order specified that the assigned supplier(s) was to be required to furnish Eagle with 65 percent of its base period use of motor gasoline during this period. The Order further provided that the Regional Administrator, upon receiving a written request from Eagle for an extension of exception relief shall (i) make a determination for any month subsequent to December 1976 as to whether Eagle would continue to incur a serious hardship in the absence of further exception relief; and (ii) make a recommendation to the National Office of Exceptions and Appeals regarding the need for an additional assignment. Based upon the data which Eagle submitted to the Regional Administrator and the recommendation of the Regional Administrator, the FEA determined that adherence to the base period supplier/purchaser relationship with respect to motor gasoline would continue to result in a serious hardship to the firm. Accordingly, the exception relief which had previously been granted to Eagle was extended for the months of January, February, and March 1977.

The Permian Corp.; Houston, Texas; FEE-3401 (Possum Kingdom), FEE-3402 (Todd Ranch); Natural Gas Liquids and Products

The Permian Corporation (Permian) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Permian to increase the selling prices of natural gas liquids and natural gas liquid products it charges to reflect non-product cost increases which the firm has incurred at its Possum Kingdom and Todd Ranch natural gas processing plants. In considering the applications, the FEA noted that, as a general rule, exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.00375 per gallon passthrough for natural gas liquids and the $.005 per gallon passthrough for natural gas liquid products which are permitted under Section 212.165. The FEA found that Permian had made such a showing and therefore granted Permian appropriate exception relief with respect to those two gas plants for the period December 13, 1976 through June 30, 1977.

United Refining Co.; Texas American Oil Corp.; Washington, D.C. FEE-2948; Crude oil; refined products

The United Refining Company (United) and Texas American Oil Corporation (TAO) filed a joint submission in which they requested various types of administrative relief in order to facilitate the proposed acquisition by TAO of United's Osceola refinery and associated marketing operations. In the Decision which it issued the FEA noted that the Mandatory Petroleum Allocation and Price Regulations are not specifically designed to apply to unusual conditions arising from the purchase and sale of a refinery. Consequently, the many issues involved in the proposed transaction were consolidated for evaluation through the exceptions process. With respect to the request that various types of relief be made retroactive to the effective date specified in the firms' Purchase Agreement, the FEA found that United and TAO failed to demonstrate that they were unable to negotiate an agreement to delay the effective date of transfer until after the FEA reached a determination on their application. The FEA therefore determined that any relief in this case should be granted on a prospective basis only. Based on the material submitted by United and TAO and the precedents established in prior decisions involving refinery acquisitions, the FEA determined that TAO should be permitted to compute its maximum allowable prices for refined products by using the May 15, 1973 prices which United charged at the Osceola refinery. Similarly, United was required to exclude from its calculation of maximum allowable prices the May 15, 1973 prices and May 1973 costs of the Osceola refinery. The FEA also determined that a portion of United's unrecouped product and non-product costs should be allocated to

TAO but that the method of allocation proposed by the firms should be modified to permit TAO to assume a portion of United's "banks" based on the ratio between United's gasoline sales from the Osceola refinery within the twelve month period immediately preceding the acquisition and United's total gasoline sales in that period.

In considering the firm's proposed treatment of the revenues involved in the purchase and sale of the Osceola product inventories, the FEA found that the method prescribed in the firms' Purchase Agreement would permit United to receive a price from TAO which could include a margin in excess of United's laid-in cost of the inventories and that, contrary to the intent of the Emergency Petroleum Allocation Act, this method could result in a double recovery of costs which could be reflected in increased prices to TAO's customers. The FEA therefore approved exception relief which permitted the transfer from United to TAO of all product and non-product costs incurred at the Osceola refinery in the month preceding the refinery sale, and required United to exclude those costs from its calculations for purposes of Section 212.93. The FEA also granted United an exception from the equal application rule with respect to the revenues it receives from the sale of the Osceola inventories to TAO.

With respect to the issues presented by the firms involving the allocation of refined products, the FEA determined that in order to avoid a disruption in the Osceola refinery operations and supply dislocations to purchasers of refined products from the refinery: (i) United should be permitted to sell the Osceola product inventories to TAO without including them in its allocable supply; (ii) United's base period relationships with purchasers of products refined at the Osceola refinery should be terminated and TAO should be assigned to supply those purchasers; and (iii) United's rights to purchase refined products from its base period suppliers should be transferred to TAO. In addition, the FEA concluded that TAO should be permitted to participate immediately in the Old Oil Entitlements Program by beginning to earn entitlements with respect to the crude oil runs and receipts at the Osceola refinery during the month in which the refinery acquisition is consummated or the month in which this Decision and Order is issued, whichever is later. However, in order to avoid windfall benefits to United or price distortions in the selling prices charged to the customers of the Osceola refinery, United was required to remit to TAO the revenues which it receives from the sale of entitlements with respect to the Osceola facility during the two months prior to the time TAO begins earning entitlements. Consequently, the firms' submission was granted in part and denied in part.

Warrior Asphalt Co.; of Alabama, Inc.; Tuscaloosa, Ala.; FEE–3224; Crude Oil

Warrior Asphalt Company of Alabama, Inc. (Warrior) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) in which it requested that the exception relief granted to the firm on June 17, 1976 be extended for an additional period of time. *Warrior Asphalt Co. of Alabama, Inc.*, 3 FEA Par. 83,237 (June 17, 1976). In the June Decision, the FEA determined that in order to alleviate the serious hardship which Warrior would experience as a consequence of the Entitlements Program, exception relief should be extended which would relieve the firm of any obligation to purchase entitlements during the months of June through November 1976. In considering Warrior's request for extension of exception relief, the FEA applied the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Ref. Co.*, 2 FEA Par. 83,275 (September 11, 1975), to the Warrior submission. Based on the financial data which Warroir furnished, the FEA determined that even in the absence of further exception relief, Warroir would realize a profit margin in its current fiscal year which exceeds its historical profit margin. The FEA therefore concluded that Warrior failed to demonstrate that the application to it of the provisions of Section 211.67 results in a serious hardship or gross inequity. Accordingly, the exception request was denied.

Young Refining Corp.; Douglasville, Ga.; FEE–3258; Crude Oil

Young Refining Corporation (Young) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) which, if granted, would result in an extension of the exception relief which the FEA originally granted to the firm on July 18, 1976. *Young Refining Co.*, 3 FEA Par. 83,239 (July 18, 1976). In support of its exception request, Young submitted projected financial statements for its current fiscal year ending March 31, 1977 and projected monthly crude oil runs to stills and receipts of old, new and imported crude oil for its current fiscal year. In considering Young's exception request the FEA determined that as a result of Young's crude oil runs and receipts during the current fiscal year, the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1976. As a result of the projected entitlements cost which Young would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Based on the material which Young submitted, a further determination was made that exception relief also appeared appropriate for the initial months of the firm's 1978 fiscal year beginning on April 1, 1977. Under the criteria set forth in *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976); and *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), exception relief was therefore warranted. Accordingly, the FEA granted Young's Application for Exception relieving the firm of any obligation to purchase entitlements during the six-month period December 1976 through May 1977 to account for its crude oil runs to stills and old oil receipts during the period October 1976 through March 1977. However, the FEA noted in the Decision which it issued that the relief approved to Young would be reevaluated if the firm requested an extension of exception relief beyond May 1977, and also at the conclusion of the firm's current fiscal year. The Decision further noted that an adjustment will be made and Young will be required to purchase or sell additional entitlements if it received excessive or insufficient benefits in the past because of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

REQUESTS FOR STAY

Inexco Oil Co.; Houston, Tex.; FES–3456; Crude Oil

The Inexco Oil Company filed an Application for Stay of the provisions of 10 CFR 212.131(a)(3) which require a producer of crude oil from an unitized property to make certain written certifications to purchasers of crude oil from that property by November 30, 1976. Inexco requested a stay of the certification requirement with respect to the crude oil it produces and sells from unitized properties in the Redell Field in Louisiana, the Hilight Field in Wyoming, and the Brandon Field in Colorado pending a determination on the firm's application for Exception from Section 212.131(a)(3). In considering the stay request, the FEA found that each of Inexco's unitized properties in the Redell, Hilight, and Brandon Fields has an effective date of unitization prior to August 29, 1974. Accordingly, under a literal reading of the FEA Regulations, the properties would have a unit base production control level (unit BPCL) of zero—a result which was clearly not intended by the FEA when it promulgated Section 212.75 which provides for the determination of upper tier crude oil from unitized properties. In view of the substantial difficulty of correctly applying the definition of unit BPCL to Inexco's unitized properties in these three fields, the FEA determined that the certification requirement should be stayed with respect to those properties pending clarification of the manner in which Section 212.75 applies under the factual circumstances presented in this case.

Minnesota Gas Co.; Minneapolis, Minn.; FES–1071; Propane

Minnesota Gas Company (Minnegasco) requested that a Remedial Order which had been issued to the firm on November 24, 1976 be stayed pending a final determination of the firm's Appeal from that Order. The Remedial Order determined that Minnegasco had sold propane to its retail customers at prices which exceeded the maximum permissible price levels specified in 10 CFR 212.93 and directed the firm to (i) compile customer, sales and price data for the audit period and for the period November 1974 to the date of issuance of the Order, (ii) refund $97,397.91 plus interest to certain retail propane customers, and (iii) compute its maximum lawful selling price in accordance with the guidelines provided in the Order for all future retail sales of propane. On the basis of the principles previously established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), *modified*, 3 FEA Par. 85,040 (July 8, 1976), the FEA concluded that a stay should be granted to Minnegasco with regard to the refund and data compilation provisions of the Remedial Order. The FEA further concluded, however, that, in accordance with the considerations discussed in *General Crude*, the stay should be conditioned upon Minnegasco's establishment of an escrow account into which it is required to place the amount of the refunds contemplated by the Remedial Order. The provision of the Remedial Order which requires Minnegasco immediately to reduce its current selling prices to lawful levels was not stayed since Minnegasco did not claim that this provision would be inordinately difficult to comply with or that it would cause irreparable and severe injury to the firm.

SUPPLEMENTAL ORDER

Pasco, Inc., New York, N.Y.; FEX–0092; Crude Oil

On June 18, 1976, Pasco, Inc. (Pasco) was granted an exception from the provisions of 10 CFR 211.67 which reduced the firm's entitlement purchase obligation for the period April through September 1976. *Pasco, Inc.*, 3 FEA Par. 83,232 (June 18, 1976). However, following Pasco's sale on July 1, 1976 of its entire refining and marketing operations, the FEA revoked the exception relief extended in the June 18 Order with respect to the months following the firm's divestiture. *Pasco, Inc.*, 4 FEA Par. 87,006 (August 11, 1976). On December 1, 1976, Pasco requested that the FEA review the exception relief from the Entitlements Program provided to the firm in 1976 so that Pasco could account for any obligation arising from that review in its pending liquidation proceeding. In its review, the FEA

determined that Pasco had received a greater measure of relief than was necessary to enable the firm to attain its historical profit margin for the appropriate portion of its 1976 fiscal year. Pasco was therefore required to purchase entitlements to offset the excessive exception relief which it had obtained.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Marion Corp.; Wash., D.C.; FEA–1010
Molloy Manufacturing Co.; Fraser, Mich.; FEE–3387

The following submissions were dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Petrochemical Energy Group; Wash., D.C.; FEA–1037

Western Stations; Portland, Oreg.; FSG–0032

The following submissions were dismissed on the grounds that the requests are now moot:

Great Atlantic & Pacific Aeroplane Co., Van Nuys, Calif.; FEE–3518, FEE–3519

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 24, 1977.

[FR Doc.77–2756 Filed 1–25–77;9:43 am]

FEDERAL MARITIME COMMISSION

COMBI LINE AND TECOMAR, S.A.

Agreement Filed

Notice is hereby given that the following agreement has 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 the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 17, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

COMBI LINE AND TECOMAR, S.A.

Notice of agreement filed by:

Ralph Rugan, Jr., Biehl & Company, Inc., 416 Common Street, New Orleans, Louisiana 70130.

Agreement No. 10279 among the abovenamed parties is an equipment interchange agreement applicable to the services of the parties between the United States and Mexico.

Dated: January 24, 1977.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77–2880 Filed 1–27–77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP77–126]

COLUMBIA GAS TRANSMISSION CORP.

Order Authorizing Limited Term Importation of Natural Gas

JANUARY 18, 1977.

On January 18, 1977, Columbia Gas Transmission Corporation (Columbia) filed in Docket No. CP77–126 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas from Canada to the United States for a sixty-day term for use in its general system supply to meet the needs of its customers, all as more fully set forth in the application.

Columbia proposes to import 250,000 Mcf of gas per day from Canada for a sixty-day period to be purchased from TransCanada Pipelines, Ltd. (TransCanada), and delivered by TransCanada to Great Lakes Gas Transmission Company (Great Lakes) through existing authorized facilities at the international boundary at Emerson, Manitoba for the account of Columbia.

Great Lakes will transport and deliver this gas to Michigan Wisconsin Pipe Line Company (Mich-Wisc) at Crystal Falls, Michigan. The arrangements for the remaining transportation and displacement of gas have not been finalized according to Columbia; however, it is tentatively contemplated that Mich-Wisc would redeliver 195,000 Mcf of gas per day to Columbia Gulf Transmission Company (Columbia Gulf), an affiliate of Columbia, at various points of intersection between Mich-Wisc and Columbia Gulf in Louisiana offshore and onshore. The remaining 55,000 Mcf per day would be delivered by Mich-Wisc to Natural Gas Pipeline Company of America (Natural) at an intersection between those two systems, and Natural would redeliver an equivalent volume to Columbia Gulf at Erath, Louisiana. Columbia Gulf would deliver all volumes of gas under this arrangement to Columbia's existing facilities in Kentucky.

Columbia proposes to purchase the subject gas from TransCanada at a price of $1.94 per Mcf, the established Canadian export price, with the possibility of an additional payment of up to 25 cents per Mcf to TransCanada for reimbursement of expenses incurred by it and/or its customers for additional compression or storage operations necessary to accommodate the proposed sale. No contract for this purchase was submitted with the application by Columbia pursuant to Section 153.4 of the Commission's Regulations nor has the National Energy Board of Canada (NEB) issued an export license for such gas. In view of the emergency to be addressed, we will waive this requirement; however, the authorization herein granted will be conditioned upon the filing of such contract as required by Section 153.8 of our Regulations. Columbia states that the NEB will permit such exportation of gas but may require a pay-back of this gas to TransCanada between 1980 and 1985, inclusive, in the event there is a shortage of Canadian gas to fulfill contractul commitments under present export licenses issued by the NEB.

In its authorization, Columbia asserts that prompt authorization of this limited term importation and purchase is urgently needed to assist in mitigating the unprecedented emergency gas supply situation over its system. Columbia describes its supply situation as follows: it has experienced unusually cold weather throughout the 1976–1977 heating season to date as determined by heating degree days deficiency (DDD). During the last 16 days of October, Columbia's system experienced weather 91 percent colder than normal. The months of November and December 1976 were 35 percent and 17 percent colder than normal. This trend has continued during the month of January.[1] On November 1, 1976, Columbia imposed a curtailment level of 210 Bcf which equates to a curtailment of 63 percent of Priority 2 of Columbia's 3-priority plan. Due to the cold winter weather, on January 1, 1977, this level was increased to 70 percent of Priority 2 for the remaining 3 winter months. Columbia furthermore indicates that it is experiencing a dramatic drawdown of storage volume which reduces the amount of gas that can be withdrawn from storage on any given day during the remainder of the winter. Columbia expects subsequent to February 1, 1977, for the remainder of the winter daily deficiencies of up to 1,100,000 Mcf of gas under the optimistic forecast of normal weather and a projected flowing gas supply based upon historical temperatures.

[1] The months of October and November were the coldest experiences on Columbia's system in 30 years, and December was the fifth coldest in 30 years.

Columbia's best estimate of additional gas which might be purchased this winter from the intrastate market is 10 Bcf.

The Commission is cognizant of the unprecedented cold weather which has affected the eastern and southern portions of the country including Columbia's service region. On January 14, 1977, in the order issued in Docket No. CP77-116, Houston Pipeline Company, we noted that numerous natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads and that emergency measures are needed to cope with this situation (mimeo p. 2). The application by Columbia for a limited term authorization herein clearly demonstrates that additional gas is needed to assist Columbia in maintaining its ability to render natural gas service to its customers. The Commission reaches no conclusion as to the need of Columbia relative to other pipelines. Viewed in the context of Columbia's needs alone, we shall grant authorization for the proposed importation to the extent possible. The public interest requires that the authorization here issued be conditioned to allow a subsequent evaluation of the relative needs and appropriate response thereto. This authorization will be granted under the broad powers conferred upon the Commission by Sections 3 and 16 of the Natural Gas Act. *Public Service Commission of the State of New York* v. *FPC*, 327 F. 2d 893. *Niagara Mohawk Power Corporation* v. *FPC*, 379 F. 2d 153 (D.C. Cir. 1967).

At a hearing held on January 18, 1977, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) A natural gas supply emergency situation exists on the Columbia Gas Transmission Corporation system which has substantially diminished Columbia's ability to render natural gas service to its high priority customers.

(2) Approval of the proposed importation of gas by Columbia will materially assist in helping to alleviate curtailment of high priority customers and is consistent with the public interest.

(3) It is necessary and appropriate for the purposes of the Natural Gas Act and the Commission's Regulations thereunder to waive the Commission's Regulations as hereinafter provided.

The Commission orders:

(A) Columbia Gas Transmission Corporation is herein authorized to commence the importation of 250,000 Mcf of natural gas per day from Canada for a sixty-day period, as hereinbefore described and as more fully described in the application in Docket No. CP77-126, upon the terms and conditions outlined below.

(B) The authorization hereinabove granted is conditioned upon TransCanada Pipelines, Ltd.'s receiving appropriate authorization from the National Energy Board of Canada for the exportation of natural gas from Canada.

(C) The gas imported under the subject arrangement shall not be used to displace alternate fuel capability or cause other gas to displace alternate fuel capability.

(D) Columbia shall file within 10 days after the initial importation of gas herein its contract for the purchase of such gas with TransCanada and any other contracts which are designed to effectuate the transportation of the imported gas to its intended market.

(E) It could become necessary for Columbia to sell this imported gas, as directed by the Commission, to pipelines with a greater need to protect high priority users. This order is conditioned to allow a subsequent evaluation of the relative needs of Columbia and other natural gas pipelines to the subject gas and appropriate action by the Commission relative thereto.

(F) Pursuant to the provisions of Section 1.7 of the Commission's Rules of Practice and Procedure, the following sections of the Commission's Regulations are hereby waived to facilitate issuance of this order: Section 2.1 of the Commission's General Policy and Interpretations and Section 153.4 of the Commission's Regulations under the Natural Gas Act.

[FR Doc.77-2812 Filed 1-27-77;8:45 am]

GAS POLICY ADVISORY COUNCIL

Meeting Agenda

Supply-Technical Advisory Task Force-Synthesized Gaseous Hydrocarbon Fuels, Conference Room 5200, Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, D.C. 20426, February 15, 1977, 9:30 a.m. Presiding: Mr. William J. McCabe, FPC Coordinating Representative and Secretary, Gas Policy Advisory Council.

1. Call to Order and Introductory Remarks, Mr. William J. McCabe.

2. Remarks by Chairman and Vice Chairman, Dr. Alan G. Fletcher, Mr. Charles W. Margolf.

3. Working Session—Subgroup II: Siting and Environment, Mr. Charles W. Margolf:

(a) Review of circulated draft reports.

(b) Prepare draft reports for inclusion in final report.

4. Review of Economic Study, Dr. James J. Harris.

5. Other Business.

6. Adjournment, Mr. William J. McCabe.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting or if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-3001 Filed 1-26-77;3:55 pm]

[Docket No. CP77-121]

NATURAL GAS PIPELINE CO. OF AMERICA AND UNITED GAS PIPE LINE CO.

Application

JANUARY 21, 1977.

Take notice that on January 10, 1977, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, and United Gas Pipe Line Company (United), 700 Milam Street, Houston, Texas 77001, filed in Docket No. CP77-121 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural and United to exchange up to 1,000 Mcf of natural gas per day, and to retain in place and operate facilities required to implement the exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Natural and United have entered into an exchange agreement dated December 13, 1976, whereby Natuural would deliver up to 1,000 Mcf of natural gas per day purchased from Wynn Miller[1] in the Normanna Area, Bee County, Texas, to United at a point on its Bruni-Junction transmission system in Section 45, Hicks and Hall Cottonfield Addition, Bee County, Texas (Bruni-Junction Delivery Point), and United would deliver equivalent volumes to Natural at the outlet of Getty Oil Company's Normanna Gas Processing Plant, Bee County, Texas (Normanna Redelivery Point). Further, it is stated that the daily exchange volume is to be limited by United's supply at the outlet of the Normanna Gas Processing Plant which is dependent upon United's field supply.

The application states that Natural has constructed and is operating the facilities necessary to connect and measure the gas to be delivered to United at an existing tap connection on United's pipeline at the Bruni-Junction Delivery Point at an estimated cost of $16,825, and commenced deliveries to United on December 29, 1976, pursuant to Letter Order of the Commission dated December 21, 1976. Natural requests authorization to retain these facilities for the long-term exchange proposed herein.

It is stated that the exchange agreement is for a primary period of four years from the date of first delivery and on a month-to-month basis thereafter until canceled by either party.

It is asserted that the exchange agreement between Natural and United is mutually beneficial in that it provides a means for Natural to connect a remote source of gas supply into its system obviating the necessity to construct and operate extensive and/or duplicate fa-

[1] Wynn Miller has filed for a small producer certificate pursuant to § 157.40(c) of the Regulations under the Natural Gas Act (18 CFR 157.40(c)), on December 20, 1976, in Docket No. CS77-195.

cilities, and it enables United to receive gas directly into its transmission system downstream of the Normanna Redelivery Point. It is also asserted that the exchange would have no effect on any other sales or services now rendered nor would there be any change in Applicants' operations occasioned thereby.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1977, file with the Federal Power 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 Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2809 Filed 1-27-77;8:45 am]

[Docket No. ER77-140]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Filing of Agreement

JANUARY 21, 1977.

Take notice that Public Service Company of New Hampshire (PSNH) on January 10, 1977, tendered for filing as an initial rate schedule a Transmission Contract with Taunton, Massachusetts Municipal Lighting Plant (the Buyer).

PSNH states that under the Contract, PSNH transmitted through its system entitlements of power which the Buyer will be purchasing from Vermont Electric Power Company, Inc.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1976.

According to PSNH, copies of the filing were served upon Taunton Municipal Lighting Plant and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2810 Filed 1-27-77;8:45 am]

[Docket No. ER77-141]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Filing of Agreement

JANUARY 21, 1977.

Take notice that Public Service Company of New Hampshire (PSNH) on January 10, 1977, tendered for filing as an initial rate schedule a Transmission Contract with New Bedford Gas and Edison Light Company (the Buyer).

PSNH states that under the Contract, PSNH transmitted through its system entitlements of power which the Buyer will be purchasing from Green Mountain Power Corporation.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of November 1, 1976.

According to PSNH, copies of this filing were served upon New Bedford Gas and Edison Light Company and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 3, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2811 Filed 1-27-77;8:45 am]

[Docket No. RP74-55]

SOUTHERN NATURAL GAS CO.

Order Approving Stipulation and Agreement

JANUARY 19, 1977.

On December 3, 1976, Southern Natural Gas Company (Southern) filed a proposed stipulation and agreement in the above-captioned docket with a motion for approval of the agreement. The proposed agreement would resolve all issues in this proceeding. Southern states that it will move for dismissal with prejudice of its pending appeal in the Fifth Circuit of the Commission's orders of August 20, 1975, and October 17, 1975, in this docket should the proposed agreement be approved. Southern's appeal is designated as *Southern Natural Gas Company* v. *FPC*, 5th Circuit No. 75-4309. For the reasons stated below, the Commission shall approve the proposed agreement.

By order issued January 7, 1974, in this proceeding, the Commission ordered a hearing to determine "the proper transportation charges to be included in the cost of the cushion gas in the Muldon storage project." The Commission affirmed the result reached in the Initial Decision in this proceeding by order dated August 20, 1975, that "Southern be permitted to capitalize only the incremental cost of .3665 cents per Mcf for transporting the cushion gas to storage . . ." The Commission, by Order Denying Rehearing issued October 17, 1975, reaffirmed its earlier ruling. Southern challenged the Commission's treatment in *Southern Natural Gas Company* v. *FPC*, *supra*.

The proposed agreement permits Southern to capitalize certain costs associated with the injection of volumes to Southern's Muldon Storage Field during the period April through June, 1972. First, the difference between the volumes underlying the settlement rates in Docket No. RP70-38 and Southern's actual sales volumes for the period July 1, 1971, through June 30, 1972, was calculated. This difference is 7,670,850 Mcf. Based upon a system average transmission rate, excluding return and taxes, in Docket No. RP70-38 of 10.11¢ per Mcf, the amount of transportation costs for these volumes is $775,523.00. Second, added to this figure is the incremental fuel cost associated with the remaining volumes injected into Muldon Field from April through June, 1972. The remaining volumes were 18,028,150 Mcf with an incremental fuel allowance of $.01126 per Mcf which equals $202,997.00. The total amount to be capitalized in Account 117 under the proposed settlement is $978,520.00. This contrasts with Southern's original request to capitalize $3,906,248, with return and taxes, or $2,598,169, excluding return and taxes.

Southern agrees to move to dismiss with prejudice its pending appeal should the proposed agreement be approved. Based upon its review of the agreement, the Commission believes that it represents a reasonable compromise concerning the amount in controversy here. Should the Fifth Circuit grant Southern's motion to dismiss with prejudice,

this proceeding will be terminated. Accordingly, the Commission believes good cause exists to approve the proposed agreement.

The Commission orders: (A) The proposed stipulation and agreement filed by Southern on December 3, 1976, and incorporated by reference herein, is hereby approved.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2813 Filed 1-27-77;8:45 am]

[Docket No. RP77-28]

SOUTHERN NATURAL GAS CO.

Application

JANUARY 26, 1977.

Take notice that on January 19, 1977, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. RP77-28 an application pursuant to Section 7 of the Natural Gas Act for authorization for the purchase of 540,000 gallons of propane per day for a period of 60 days, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant is currently curtailing Priority 1 consumers on its system by 9 percent because of unprecedented cold weather. Further, it is stated that many of Applicant's customers are taking gas in excess of the gas allocated to them by Southern which puts an additional strain on Applicant's gas supply.

Applicant proposes to purchase propane from Enterprise Products Company (Enterprise) in the amount of 540,000 gallons per day for a period of 60 days for injection into its system. Applicant states that such propane is stored near Petal, Mississippi, and would be moved by truck and injected into Applicant's pipeline system at its Pearl River Compressor Station.

It is stated that these volumes of propane, the equivalent of approximately 50,000 Mcf of natural gas per day, would be sold to Applicant for approximately 32 cents per gallon, the controlled price of the Federal Energy Administration, and would equate to an equivalent price of approximately $3.46 per Mcf of natural gas. Applicant states that it requests advance authority to track these costs into the deferred account of its purchased gas adjustment, Section 17 of the General Terms and Conditions of its FPC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 1977, file with the Federal Power 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.77-3002 Filed 1-27-77;8:45 am]

SUN OIL CO., ET AL.

Amended Petition For Special Relief

JANUARY 25, 1977.

Sun Oil Company, Docket No. RI76-117; Anadarko Production Company, Docket No. RI76-119; Northern Michigan Exploration Company, Docket No. RI76-132; Clark Oil Production Company, Docket No. RI76-133; Diamond Shamrock Corporation, Docket No. RI 76-135.

Take notive that on January 14, 1977, Clark Oil Producing Company (Petitioner), 601 Jefferson, Houston, Texas 77002, filed a proposed settlement agreement in the above-captioned dockets which amends its petition for special relief filed June 24, 1976,[1] for natural gas produced in waters more than 250 feet deep, pursuant to Section 2.56a(g)(2) of the Commission's Rules of Practice and Procedure. By this amendment petitioner seeks a flat rate of approximately $1.57 per Mcf, commencing February 1, 1977, for all gas attributable to its 15 percent working interest in West Cameron Block 639, Offshore Louisiana. Petitioner, on the basis of the record submitted to date, was seeking a comparable rate of approximately $2.26.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1977, file with the Federal Power 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2807 Filed 1-27-77;8:45 am]

[1] Notice issued July 9, 1976. Published in the FEDERAL REGISTER on July 19, 1976 at 41 FR 29750.

[Docket No. CI77-220]

TEXACO INC.

Application

JANUARY 25, 1977.

Take notice that on January 14, 1977, Texaco Inc. (Applicant), P.O. Box 2420, Tulsa, Oklahoma, 74102, filed in Docket No. CI77-220 an application pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Michigan-Wisconsin Pipeline Company (Mich-Wis) from the Cupp "D" Unit 1, Beckham County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas to Mich-Wis on January 1, 1977, within the contemplation of Section 157.29 of the Regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for a period not to exceed six months, or until Applicant is able to begin the sale to the alternate and originally intended purchaser, whichever date is earlier. The contractually agreed initial rate for the gas is $1.44 per Mcf (at 14.73 psia), exclusive of all State or Federal production, severance or similar taxes; the escalation provided in subsection (a)(2) of Section 2.56a of the Regulations; and the quality and pressure conditions as set forth in the contract.

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 February 4, 1977, file with the Federal Power 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.2806 Filed 1-27-77;8:45 am]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Domestic Policy Directive of December 20-21, 1976

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on December 20-21, 1976.[1]

The information reviewed at this meeting suggests that growth in real out-

put of goods and services in the fourth quarter has remained at about the reduced pace of the third quarter. In both October and November retail sales increased substantially. Industrial production rose appreciably in November—following 2 months of decline—in large part as a result of termination of strikes in two major industries, although advances in output were widespread among other industries. Employment in manufacturing also recovered from the effects of strikes. According to household survey data, the gain in total employment was large, but the unemployment rate increased from 7.9 to 8.1 per cent as the civilian labor force—which had changed little over the preceding 3 months—increased considerably. The wholesale price index for all commodities rose as much in November as in October, reflecting another substantial increase in average prices of industrial commodities; average prices of farm products and foods changed little. The advance in the index of average wage rates over recent months has remained below the rapid rate of increase during 1975.

The average value of the dollar against leading foreign currencies has declined slightly in recent weeks. The pound sterling and also the currencies associated in the European "snake" arrangement strengthened against the U.S. dollar, while the Canadian dollar depreciated sharply. In October the U.S. foreign trade deficit remained substantial.

M–1, which had expanded sharply in October, was unchanged in November. Although growth in M–2 and M–3 moderated, it remained substantial as inflows of the time and savings deposits included in these broader aggregates continued strong. Interest rates have declined appreciably in recent weeks. In late November Federal Reserve discount rates were reduced from 5½ to 5¼ per cent, and in mid-December member bank reserve requirements were lowered somewhat.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions that will encourage continued economic expansion, while resisting inflationary pressures and contributing to a sustainable pattern of international transactions.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to maintain prevailing bank reserve and money market conditions over the period immediately ahead, provided that monetary aggregates appear to be growing at about the rates currently expected.

[1] The Record of Policy Actions of the Committee for the meeting of December 20–21, 1976, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

By order of the Federal Open Market Committee, January 21, 1977.

ARTHUR L. BROIDA,
Secretary.

[FR Doc.77-2761 Filed 1-27-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 772 3015]

BRYSON IMPLEMENT CO., ET AL.

Consent Agreement with Analysis to Aid Public Comment

Correction

In FR Doc. 77–1252, appearing at page 3027, in the issue for Friday, January 14, 1977, the following changes should be made:

On page 3028, the eleventh line from the bottom of the first column should read "amended, 15 U.S.C. 1601–65(a), (Supp. IV,".

On page 3028, in the second column, the sixth line of the third complete paragraph should read "to the place for the customer's signature on".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEE

Meeting

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Subcommittee of the Obstetrics and Gynecology Advisory Committee.	Feb. 25, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; A. T. Gregoire, Ph. D. (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3510.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The revision of guidelines for the clinical testing of systemic contraceptive products.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

Dated: January 19, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2403 Filed 1-21-77;1:10 p.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Meeting

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Hemorrhoidal Panel	Feb. 20 and 21, 9 a.m., Concord Room, Mayflower Hotel, 1127 Connecticut Ave. NW., Washington, DC.	Open committee discussion Feb. 20, 9 a.m. to 4:30 p.m.; open public hearing Feb. 21, 9 a.m. to 10 a.m.; open committee discussion Feb. 21, 10 a.m. to 4:30 p.m.; Thomas D. DeCillis, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

Dated: January 25, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2938 Filed 1-27-77;8:45 am]

[Docket No. 76N-0339; DESI 10598]

ANTIEMETIC COMBINATION PREPARATION

Opportunity for Hearing on Proposal to Withdraw Approval of Pertinent Parts of the New Drug Application

In a notice (DESI 10598) published in the FEDERAL REGISTER of July 8, 1972 (37 FR 13489), the Food and Drug Administration (FDA) announced its conclusion that the drug product described below is possibly effective for nausea and vomiting of pregnancy. On May 15, 1974 (39 FR 17343), a notice was published in the FEDERAL REGISTER permitting the drug to remain on the market pending completion and review of clinical studies to determine its effectiveness. An additional clinical study was submitted, but FDA has determined that it does not provide substantial evidence of effectiveness for the combination product. This notice announces that conclusion and proposes to withdraw approval of the product. Persons wishing to request a hearing may do so on or before February 28, 1977.

NDA 10-598; That part pertaining to Bendectin Tablets containing dicyclomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride; Merrell-National Laboratories, Division of Richardson-Merrell, Inc., 110 East Amity Rd., Cincinnati, OH 45215.

On April 15, 1975, the firm submitted results of an eight-way multicenter study intended to establish substantial evidence of effectiveness of the drug product. The study, which was randomized and double-blind, was conducted over a 7-day period and involved 29 investigators and 2,308 patients, 1,599 of whom completed the study. The criterion for admission was morning sickness pattern of early pregnancy. The drugs used were dicyclomine/doxylamine/pyridoxine; doxylamine/pyridoxine; dicyclomine/doxylamine; doxylamine; dicyclomine/pyridoxine; dicyclomine; pyridoxine; and placebo. The data were evaluated and determined not to provide substantial evidence of effectiveness of the three-component combination (Bendectin). In order to meet the requirements for proving the effectiveness of a fixed combination drug (21 CFR 300.50), it must be shown that each of the ingredients contributes to the claimed effects of the combination. The results of the study showed that doxylamine is the major effective ingredient and that pyridoxine has an independent antinauseant effect, but that dicyclomine does not significantly contribute to the effectiveness of the combination product. However, the results of the study did show that the combination of doxylamine and pyridoxine is effective for nausea and vomiting of pregnancy.

On March 11, 1976, Merrell-National Laboratories supplemented their new drug application to provide for a reformulated product containing only doxylamine succinate and pyridoxine hydrochloride. This product is being handled through the normal supplemental new drug application procedures.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 21 CFR 300.50 that provides substantial evidence of the effectiveness of the three-component combination drug product.

Therefore, notice is given to the holder(s) of the new drug application(s) and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505 (e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) (or if indicated above, those parts of the application(s) providing for the drug product(s) listed above) and all amendments and supplements thereto on the ground that new information before him with respect to the drug product(s),

evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20857.

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201 (p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

If an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 28, 1977, a written notice of appearance and request for hearing, and (2) on or before March 29, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

All submissions pursuant to this notice, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk during working hours, Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77-2770 Filed 1-27-77;8:45 am]

[Docket No. 76N-0473; DESI 4203]

CERTAIN GAMMA BENZENE HEXACHLORIDE TOPICAL PREPARATIONS

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

In notices published in the FEDERAL REGISTER of September 17, 1970 (35 FR 14576) (Docket No. FDC–D–231 (now Docket No. 76N–0473)) and June 23, 1972 (37 FR 12418), the Food and Drug Administration announced its conclusions regarding the effectiveness of the drug products described below containing gamma benzene hexachloride. The drug products are used in the treatment of parasitic infestations, such as scabies and pediculosis. Final conclusions concerning the drugs were announced in the June 23, 1972 notice, classifying them as effective or lacking substantial evidence of effectiveness for various indications. The June 23, 1972 notice did not offer an opportunity for hearing concerning the indications which were reclassified in that notice to lacking substantial evidence of effectiveness. This notice offers an opportunity for hearing concerning them and states the conditions for marketing the drugs for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before February 28, 1977.

The notice that follows does not pertain to the other drugs included in the September 17, 1970 notice. Products containing crotamiton were classified in the September 17, 1970 notice as lacking substantial evidence for a certain indication, and effective for other indications. No person requested a hearing concerning the indication lacking substantial evidence of effectiveness and it is no longer allowable in labeling. Any such product labeled for that indication is subject to regulatory action.

NDA 10–718; Kwell Shampoo containing gamma benzene hexachloride; Reed and Carnrick, 30 Boright Ave., Kenilworth, NJ 07033.

NDA 6–309; Kwell Cream containing gamma benzene hexachloride; Reed and Carnrick.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20857.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications listed in the labeling conditions below. The drug lacks substantial evidence of effectiveness for the probably and possibly effective indications which were reclassified in the June 23, 1972 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in cream or liquid form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

SHAMPOO

For the treatment of pediculosis such as: Pediculosis capitis (head louse) and pediculosis pubis (crab louse).

CREAM

For the treatment of pediculosis, such as: Pediculosis capitis (head louse) and pediculosis pubis (crab louse). It is also effective in the treatment of scabies. (*Sarcoptes scabiei*).

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before March 29, 1977, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1 (f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined is 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before February 28, 1977, a written notice of appearance and request for hearing, and (2) on or before March 29, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference number DESI 4203, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements (identify with NDA number): Division of Anti-Infective Drug Products (HFD-140). Rm. 12B-45, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading

of this notice): Hearing Clerk, Food and Drug Administration (HFC–20), Rm. 4–65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC–18), Rm. 4–62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: January 17, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77–2775 Filed 1–27–77;8:45 am]

ENDOCRINOLOGY AND METABOLISM ADVISORY COMMITTEE

Meeting Change

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. D)), the Food and Drug Administration announced in a notice published in the FEDERAL REGISTER of January 18, 1977 (42 FR 3348), public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the meeting of the Endocrinology and Metabolism Advisory Committee scheduled for February 17 and 18, 1977, will meet only on February 18, 1977, Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, with the open public hearing beginning at 9 a.m. and the open committee discussion at 10 a.m.

Dated: January 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–2773 Filed 1–27–77;8:45 am]

[Docket No. 76N–0481]

NEW DRUG APPLICATIONS

Withdrawal of Approval; Correction

In FR Doc. 70–9292 appearing on page 11929 in the FEDERAL REGISTER of July 24, 1970 (35 FR 11929), under "[Docket No. FDC–D–135; Various NDA's]," the Food and Drug Administration announced the withdrawal of approval of a large number of new drug applications (NDA's) for failure of sponsors to submit required reports. The inclusion in the notice of NDA 10–124 for Serpalan (Reserpine) Tablets, manufactured by Lannett Co., 9000 State Rd., Philadelphia, PA, was in error. Accordingly, on page 11940, in the second column, under the name and address for Lannett Co., the notice is corrected by deleting the line "10–124, Serpalan Tablets 0.1, 0.25, 1.0 mg."

Dated: January 21, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77–2774 Filed 1–27–77;8:45 am]

[Docket No. 76N–0174]

SAFETY OF CERTAIN FOOD INGREDIENTS

Opportunity for Public Hearing

The Food and Drug Administration is announcing an opportunity for public hearing on the safety of certain food ingredients to determine if they are generally recognized as safe (GRAS), or subject to a prior sanction. Requests to make oral presentation at the public hearing must be postmarked on or before February 28, 1977.

The Commissioner of Food and Drugs issued, in the FEDERAL REGISTER of July 26, 1973 (38 FR 20053), a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (hereinafter referred to as the Select Committee), about the safety of ingredients used in food to determine if they are GRAS or subject to a prior sanction.

The Commissioner now gives notice that the Select Committee is prepared to conduct a public hearing on the following categories of food ingredients: adipic acid; formic acid, ethyl formate and sodium formate; and hydrogenated soybean oil. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of these substances, in addition to those previously submitted in writing pursuant to notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20051, 20053) and April 17, 1974 (39 FR 13796, 13798).

The Select Committee has reviewed all the available data and information on the categories of food ingredients listed above and has reached one of the five following tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted. (This finding does not apply to the substances covered by this notice.)

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

5. The information available is not sufficient to make a tentative conclusion. (This finding does not apply to the substances covered by this notice.)

The following table lists each ingredient, the Select Committee's tentative conclusion (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusion.

Substance	Select committee tentative conclusion	Scientific literature review		Animal study report order No. and cost	Other information
		Order No.	Cost		
Adipic acid	1	PB-220-603/AS.	$3.25	Mutagenic evaluation (host mediated, dominant lethal, and cytogenetics) of adipic acid (71-50) by Litton Bionetics, Inc., under FDA contract (PB-215-400/AS, (5.75). Teratologic evaluation of adipic acid (71-50) by Food and Drug Research Labs., Inc., under FDA contract (PB-221-892, $3.75).	(a) Human intake data, taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)", available from the National Technical Information Service, PB Nos. 221-921 through 221-940. (b) Report on subacute feeding of adipic acid submitted to E. I. duPont de Nemours & Co. by Hazelton Lab. (c) Investigation of the toxic and teratogenic effects of GRAS substance to the developing chicken embryo: adipic acid. FDA in-house investigation.
Ethyl formate	1	PB-223-558/AS	$4.00		(a) Human intake data, taken from "A Comprehensive Survey of Industry on the use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service, PB Nos. 221-921 through 221-940.
Formic acid (used in food-packaging materials).	1				
Sodium formate (used in food-packaging materials).					

Substance	Select committee tentative conclusion	Scientific literature review		Animal study report order No. and cost	Other information
		Order No.	Cost		
Hydrogenated soybean oil.	1	PB-228-557/AS	$4.00	----------	(a) Letter dated July 1, 1976, from Corbin Miles, FDA. (b) Letter dated Jan. 7, 1976, from G. F. Spencer, USDA. (c) Memorandum dated Mar. 27, 1974, from R. J. Dimler, USDA. (d) Carpenter, D. L., J. Lehmann, B. S. Mason, and H. T. Slover, 1976. Lipid composition of selected vegetable oils. J. Am. Oil Chem. (in press). (e) Mounts, T. L., 1976. Double bond position affects metabolism of cis-octadecenoates. Lipids (in press).
Hydrogenated soybean oil (used in food-packaging materials).	1				

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22151.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the FEDERAL REGISTER of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on (1) adipic acid, (2) formic acid, ethyl formate, and sodium formate, and (3) hydrogenated soybean oil are available for review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, D.C. 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review in the office of the Hearing Clerk.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the length of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing, addressed to: The Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each such request shall be sent to the Hearing Clerk, address noted above, and all such requests shall be placed on public display in that office. Any such requests must be postmarked on or before February 28, 1977, shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is requested for the presentation. As soon as possible thereafter, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the FEDERAL REGISTER.

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Due to time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Hearing Clerk, Food and Drug Administration, and shall be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will also be placed on public display in the office of the Hearing Clerk, Food and Drug Administration.

Dated: January 17, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-2222; Filed 1-27-77;8:45 am]

Assistant Secretary for Education

NATIONAL CENTER FOR EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activity are invited. Comments must be received on or before February 28, 1977 and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

Dated: January 25, 1977.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA COLLECTION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:

A Study of the State of Bilingual Materials Development and the Transition of materials to classrooms ("Evaluation of Bilingual Curriculum Development Activities").

2. AGENCY/BUREAU/OFFICE:
U.S. Office of Education, Office of Planning, Budgeting and Evaluation.

3. AGENCY FORM NUMBERS:
OE 515-1, OE 515-2.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

The Bilingual Education Program authorized under Title VII of the Elementary and Secondary Education Act (ESEA) provides funds to local education agencies (LEA's) for projects designed to meet the special needs of children who come from homes in which the dominant language is not English. The original 1968 legislation, P.L. 90-247 stipulates in Section 704(a)(b) that approved activities include "* * * the development and dissemination of special instructional materials for use in bilingual education programs * * *." The Education Amendments of 1974, P.L. 93-380, Section 742(c)(2) directs the Commissioner of Education to "develop and disseminate instructional materials and equipment suitable for use in bilingual education programs * * *." The Interim Rules and Regulations for the Title VII Program published in the Federal Register in 1975 (Section 123.12, "Authorized Activities") refers to the establishment of Resource Centers, Materials Development Centers, and Dissemination and Assessment Centers to carry out the development and dissemination plans.

Planning and evaluation activities are authorized under the General Education Pro-

visions Act which provides appropriations for: "(1) planning for the succeeding year for any * * * program, and (2) evaluation of * * * programs." The law also states in part: "* * * the Secretary shall transmit to [appropriate Congressional committees] an annual evaluation report which evaluates the effectiveness of applicable programs * * * such report shall * * * contain information on progress being made * * * describe the costs and benefits of the applicable program * * * identify which sectors of the public receive the benefits of such program * * *" (20 U.S.C. 1226C).

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

The information will be used by the Office of Education in its administration of the Bilingual Education Act, particularly to determine appropriate budget levels for material development and dissemination activities and to provide guidelines for improving the coordination of activities of Materials Development Centers, Dissemination and Assessment Centers, and Resource Centers funded under Title VII.

The inventory of materials in use and the survey of materials needs will be used by Materials Development Centers and by publishers in establishing priorities for the production of materials. The inventory will also assist the Office of Civil Rights in administering Title IV of the Civil Rights Act of 1974 by providing information to be used by Lau Centers for technical assistance to local education agencies.

The overall purpose of the study is to determine the status of the development of bilingual education curriculum materials and to analyze the process through which these materials are introduced into the classroom. There are five major objectives:

To assemble a list of currently available materials and of materials presently under development;

To identify shortages of materials;

To identify the likely market for materials in short supply;

To analyze procedures for field testing, publicizing, and disseminating bilingual materials by Title VII Centers; and

To synthesize and summarize information on the state of bilingual education to curriculum materials and to design a model management plan for bilingual materials development and dissemination.

Data collected in this study will also be used by the Commissioner of Education for a report to the Congress and to the President on the condition of bilingual education in the nation, including plans for future activities to be carried out. (Public Law 93-380, Sections 731(c) and 732(c).)

7. Data Acquisition plan:

a. METHOD OF COLLECTION: LEA mail survey, phone and mail survey of commercial publishers.

b. TIME OF COLLECTION: LEA—Spring 1977; Publishers—June 1977.

c. FREQUENCY: Single time.

8. RESPONDENTS:

a. TYPE: Local Education Agencies.

b. NUMBER: 614.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.5.

a. TYPE: Commercial Publishers.

b. NUMBER: 50.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.25.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Local Educational Agencies—

Lists of bilingual materials currently used by language, subject and grade.

Lists of materials developed by the LEA.

Lists of bilingual materials needed by language, subject and grade.

Numbers of students of limited English-speaking ability by grade.

How LEAs obtain information about bilingual materials.

How LEAs disseminate information about bilingual materials.

RESPONDENT TYPE: Commercial Publishers—

Lists of currently available bilingual materials, and materials to be developed in the near future.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY.

1. TITLE OF PROPOSED ACTIVITY:

Evaluation of Emergency School Aid (ESAA) Implementation and Impact at the Regional Level: Case Study Interview Protocols and Mail Questionnaires.

2. AGENCY/BUREAU/OFFICE:

U.S. Department of Health, Education, and Welfare, Region II, Office of the Regional Director and U.S. Office of Education, Office of Planning, Budgeting, and Evaluation.

3. AGENCY FORM NUMBER:

OE 517-1.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"* * * The Secretary shall transmit (to specified committees of the Congress) an annual evaluation report which evaluates the effectiveness of applicable programs * * *" (20 USC 1226c.)

"* * * the Assistant Secretary is authorized to make grants * * * and contracts * * * for the purpose of evaluating specific programs and projects assisted under this chapter." (20 USC 1612.)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

This study is needed to provide information on the effect of Regional Office procedures and assistance upon the implementation and effectiveness of ESAA Basic and Pilot projects in school districts in New York and New Jersey. The quality and usefulness of local ESAA project evaluations will be determined. Differences among districts will be examined to determine if any characteristics predict local project implementation and effectiveness.

The ultimate purpose of the study is to support alternative administrative strategies for the Regional Office which are likely to increase the effectiveness of Basic and Pilot grant projects in achiving local objectives and national goals.

The results will also be included in the Annual Evaluation Report to Congress (20 USC 1226c). Such results will be used as part of a basis for legislative or executive proposals.

Summary results will be distributed to State and local ESAA personnel in New York and New Jersey and to other interested parties.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Mail and personal interview.

b. TIME OF COLLECTION: Spring.

c. FREQUENCY: 1977 only.

8. RESPONDENTS:

a. TYPE: Local Education Agencies.

b. NUMBER: 23.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Principals.

b. NUMBER: 16.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Teachers.

b. NUMBER: 32.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

a. TYPE: Parents.

b. NUMBER: 32.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 0.8.

a. TYPE: Other (ESAA Community Advisory Board Members).

b. NUMBER: 8.

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 1.8.

9. INFORMATION TO BE COLLECTED:

RESPONDENT TYPE: Local Education Agencies—

Implementation processes, problems and perceived causes: Adherence to proposed project schedules, perceived problems in implementing separate project components, and factors hindering implementation.

Regional office contacts: Number of site visits made by regional office staff, advance notice for site visits, and changes suggested and resulting from site visits.

Technical assistance: Agencies which supplied technical assistance, content of the assistance, importance of assistance to project.

Project organization: Perceived importance of groups or individual contributors to the ESAA project, description of the role of major contributors, procedures for selection of students, and staff, inservice training.

Project goals: Perceived achievement of goals, relation of goals to problems of desegregation, perceived needs of minority isolated students.

Evaluation activities: Established evaluation criteria by component, difficulties in evaluating component, contribution of evaluation procedures to project.

Next year's proposal process: Applications submitted, differences from previous years' suggestions for change in application processes.

RESPONDENT TYPE: Principals—

Project organization: Personal level of involvement, school eligibility, student eligibility, nature of ESAA activities, differences of ESAA from regular activities, contributions of individuals or groups.

Next year's awards process: Application submitted, level of participation, difference from previous years, support for ESAA activities without Federal funding.

RESPONDENT TYPE: Teachers—

Similar to principals but the questions are directed to the individual teachers' classrooms and not the total school.

RESPONDENT TYPE: Parents—

Role in ESAA process: Knowledge of ESAA activities, difference from regular school activities, role in decision making, evaluation of ESAA Advisory Committee.

Desegregation plan and/or minority isolation: Effect of plan on children, problems arising from desegregation plan, perceived needs of minority isolated children, relationship of ESAA process to problems.

RESPONDENT TYPE: Others (ESAA Advisory Committee Members)—

Project organization: Selection of Advisory committee, selection of chairperson, level of activity in project implementation, time requirements, membership in other advisory committees.

Implementation processes, problems and their perceived causes: Adherence to proposed project schedule, specific problems, causes of problems.

Regional office contacts: Number of site visits made by regional office staff, objectives of site visits, changes suggested and resulting from site visits.

Project goals: Perceived goals of LEA program, progress toward goals, perceived national goals of ESAA.

In-service training: Personal participation, objectives of training, evaluation of training, differences from regular training.

Desegregation plan and/or minority isolation nature of problems resulting from desegregation plan; needs of minority isolated students, relation of ESAA activities.

Evaluation activities: Description of activities, difficulties in evaluating activities, progress toward meeting criteria, alternative criteria for project success.

Implementation processes, problems and their perceived causes: Adherence to proposed project schedule, perceived problems in implementing separate project components.

Regional Office contacts: Number of site visits made by regional office staff, objectives of site visits, changes suggested and resulting from site visits.

Project goals: Perceived achievement of goals, progress toward goals, relation of goals to problems of desegregation, perceived needs of minority isolated students.

Evaluation activities: Nature of evaluation activities, alternative criteria for project success.

Next year's proposal process: Application submitted, level of participation, differences from previous years, suggestions for change in application process.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:

A Review of State Oversight in Postsecondary Education.

2. AGENCY/BUREAU/OFFICE:

U.S. Office of Education, Office of Planning, Budgeting, and Evaluation.

3. AGENCY FORM NUMBER:

OE 526.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:

"The term 'institution of higher education' means an educational institution in any State which * * * is legally authorized within such State to provide a program of education beyond secondary education * * *" (Sec. 1201(a), Higher Education Act of 1965 as amended, 20 USC 1141.)

"The Commissioner shall publish a list of agencies which he determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal students assistance programs." (Sec. 438(b), Higher Education Act of 1965 as amended, 20 USC 1087.)

"The Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes." (Sec. 417(a), General Education Provisions Act, 20 USC 1226(c).)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:

Since State agencies are responsible for charting/licensing, and in a number of States approving, postsecondary institutions that thus become eligible to participate in federal assistance programs, this study is designed to provide the Office of Education (OE) with an accurate appraisal of the current status of State agencies legislative authorization for licensing and accrediting. The relationship of these laws and regulations to the practices and processes of the States in the licensing and accrediting of postsecondary institutions is the primary thrust of the study. Since postsecondary institutions become eligible to participate in (OE) programs because of such licensing and accrediting, the information will be used by the Division of Eligibility and Agency Evaluation (DEAE) of the (OE) to evaluate these State activities as well as to maintain a current file on the status of these activities.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Telephone interviews.

b. TIME OF COLLECTION: Spring, 1977.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: State Authorizing and/or Regulating Agencies for Public and Private Postsecondary Institutions.

b. NUMBER: 182 (estimated).

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 2.

9. INFORMATION TO BE COLLECTED:

The survey will collect information on the States' practices for determining the eligibility of postsecondary institutions that may participate in federal assistance programs. Questions will be designed to ask State agencies about their general structure and function in this area of licensing and eligibility; specific operational responsibilities regarding institutional practices; preferred federal technical assistance; and with aspects of their laws, detailing the agency's postsecondary institutional responsibilities, have allowed them to function particularly effectively or ineffectively.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY:
Comprehensive Career Guidance Programs: Interview Schedules.

2. AGENCY/BUREAU/OFFICE:
Office of Education, Bureau of Occupational and Adult Education.

3. AGENCY FORM NUMBER:
OE Form 552.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY:
"Section 408. (a) Each administrative head of an education agency, in order to carry out functions otherwise vested in him by law, is, subject to limitations as may be otherwise imposed by law, authorized—. . . . (4) without regard for section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, . . . as may be necessary for the conduct of such agency. . . ." (P.L. 93-380, sec. 502(a)(1); 20 U.S.C. 1221e-3)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE:
Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED:
Information collected on comprehensive career guidance programs and projects will be used by the Bureau of Occupational and Adult Education in (1) formulating future national policy directions and priorities concerning research, development, and implementation of comprehensive systems of career guidance and (2) assisting state and local education agencies in improving their capacities to provide comprehensive systems of career guidance.

7. DATA ACQUISITION PLAN:

a. METHOD OF COLLECTION: Personal Interview.

b. TIME OF COLLECTION: Spring, 1977.

c. FREQUENCY: Once.

8. RESPONDENTS:

a. TYPE: State Career Guidance Specialists in State Education Agencies.

b. NUMBER: 51 (Universe).

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 3.

a. TYPE: Project Directors of Career Guidance grants in State Education Agencies, colleges and universities, local education agencies, and nonprofit organizations.

b. NUMBER: 38 (Universe).

c. ESTIMATED AVERAGE MAN-HOURS PER RESPONDENT: 3.

9. INFORMATION TO BE COLLECTED:

The following types of information will be requested about career guidance and development: definitions; concerns of minority racial and ethnic groups, the handicapped and disadvantaged, and other special groups; needs assessment; goals and objectives; personnel development and utilization; development of materials, procedures, and techniques; placement and follow-through components; information and/or communications networks; program planning and program management components and procedures; and research and evaluation provisions.

[FR Doc.77-2816 Filed 1-27-77;8:45 am]

Social Security Administration

SECRETARY OF HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Redelegations of Authority Pertaining to the Reimbursement of Suppliers of End-Stage Renal Disease Services Under the Medicare Program, and to the Withdrawal of Approval of Medicare Coverage of Such Suppliers of Services

Correction

In FR Doc. 37112, appearing at page 55242 in the issue of Friday, December 17, 1976, and corrected at 42 FR 3901, January 21, 1977, is further corrected, on page 55243, in the ninth line, in the first column, following the words "subsection (g)", delete the words "of section (g)".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Interstate Land Sales Registration Office

[Docket No. N-77-678]

ELCONA HOMES CORP. AND ROBERT P. MYER

Hearing

Pursuant to 42 U.S.C. 5414(g) and 24 CFR 3282.152(c) Notice is hereby given that:

1. Elcona Homes Corporation and Robert P. Myer, President, hereinafter

referred to as "Respondent," being subject to the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5401 et seq.) received a Notice of Preliminary Determination and Opportunity for Hearing issued November 23, 1976, which was sent to the Respondent pursuant to 42 U.S.C. 5414, 24 CFR 3282.151, 24 CFR 3282.407(a)(2), and 24 CFR 3282.408(b) informing the Respondent of information obtained by the Office of Consumer Affairs and Regulatory Functions—Mobile Home Standards Division alleging that an imminent safety hazard as defined at 24 CFR 3282.7(g) may exist in certain mobile homes manufactured by Respondent.

2. The Respondent filed an Answer received December 7, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Preliminary Determination and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 42 U.S.C. 5414(g), 24 CFR 3282.151 and 24 CFR 3282.152(g), it is hereby ordered that a public hearing for the purpose of taking evidence on the question set forth in the Notice of Preliminary Determination and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 Seventh Street, SW, Washington, D.C. on February 3, 1977 at 10 a.m., and all inquiries concerning these proceedings should be directed to him.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410 on or before January 31, 1977. Copies of all documents filed should be served at the same time on all parties of record.

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 3282.152(c)(1).

By the Secretary.

Dated: January 21, (1977).

JAMES W. MAST,
Chief Administrative Law Judge.

[FR Doc.77-2782 Filed 1-27-77;8:45 am]

[Docket No. N-77-679]

MASON HOMES INC.
Hearing

Pursuant to 42 U.S.C. 5414(g) and 24 CFR 3282.152(c) Notice is hereby given that:

1. Mason Homes, Inc. and John F. Dearwester, President, hereinafter referred to as "Respondent," being subject to the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 42 U.S.C. 5401 et seq.) received a Notice of Preliminary Determination and Opportunity for Hearing issued November 19, 1976, which was sent to the Respondent pursuant to 42 U.S.C. 5414, 24 CFR 3282.151, 24 CFR 3282.407(a)(2), and 24 CFR 3282.408(b) informing the Respondent of information obtained by the Office of Consumer Affairs and Regulatory Functions—Mobile Home Standards Division alleging that an imminent safety hazard as defined at 24 CFR 3282.7(g) may exist in certain mobile homes manufactured by Respondent.

2. The Respondent filed an Answer received December 2, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Preliminary Determination and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 42 U.S.C. 5414(g), 24 CFR 3282.151 and 24 CFR 3282.152(g), it is hereby ordered that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Preliminary Determination and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 Seventh Street, SW, Washington, D.C. on February 3, 1977 at 10 a.m., and all inquires concerning these proceedings should be directed to him.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C., 20410 on or before January 31, 1977. Copies of all documents filed should be served at the same time on all parties of record.

This Notice shall be served upon the Respondent forthwith pursuant to 24 C.F.R. 3282.152(c)(1).

By the Secretary.

Dated: January 21, 1977.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc.77-2783 Filed 1-27-77;8:45 am]

Office of the Secretary

[Docket No. D-77-473]

REGIONAL ADMINISTRATORS AND AREA DIRECTORS

Delegation of Authority With Respect to Labor Standards Administration for New Communities

Each Regional Administrator and Area Director is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development to administer and enforce departmental labor standards for New Communities projects assisted by guarantees under Title IV of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, 81 Stat. 476, 513; 42 U.S.C. 3901 et seq.) and Title VII of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, 84 Stat. 1791; 42 U.S.C. 4501). Each Regional Administrator shall be responsible for coordination and supervision of overall enforcement activities within the jurisdictional area of the Regional Office as well as day-to-day enforcement activities for jurisdictional areas assigned to Insuring Offices within the Region. The Area Director shall be responsible for day-to-day enforcement activities within the jurisdictional area of the Area Office.

Authority to redelegate. Each Regional Administrator and Area Director is authorized to redelegate to subordinate employees any of the authority set forth above.

(Sec. 7(d), Department of HUD Act, 12 U.S.C. 3535(d)).

Effective date: This delegation of authority is effective as of January 8, 1977.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.77-2781 Filed 1-27-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 13512]

OREGON

Order Providing for Opening of Public Lands

JANUARY 21, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 33 S., R. 32¾ E.,
- Sec. 23, SE¼SE¼;
- Sec. 24, E½SW¼, SW¼SW¼, NW¼SE¼, and E½SE¼;
- Sec. 25, SE¼NE¼;
- Sec. 26, N½NE¼, SW¼NE¼, and SE¼ NW¼.

T. 34 S., R. 32¾ E.,
- Sec. 1, lots 1 and 2, S½NE¼, S½SW¼, and SE¼;
- Sec. 2, S½SE¼;
- Sec. 12, N½N½.

T. 33 S., R. 33 E.,
- Sec. 8, S½N½, S½SW¼, NE¼SE¼, and SW¼SE¼;
- Sec. 9, N½SW¼, W½SE¼, and SE¼SE¼;
- Sec. 10, S½SW¼;
- Sec. 15, N½NW¼;
- Sec. 16, E½, E½NW¼, NW¼NW¼, and SE¼SW¼;
- Sec. 17, SW¼NW¼;
- Sec. 20, S½S½;
- Sec. 21, S½NW¼, N½S½, and SE¼SE¼;
- Sec. 22, SW¼, E½SE¼, and SW¼SE¼;
- Sec. 23, SW¼SW¼;
- Sec. 26, NW¼NW¼ and SW¼SW¼;
- Sec. 27, S½;
- Sec. 28, SE¼NE¼, NW¼NW¼, S½SW¼, and SE¼SE¼;
- Sec. 29, N½N½, SW¼NW¼, SW¼, and S½SE¼;
- Sec. 32, N½NE¼, SE¼NE¼, and NE¼ NW¼;
- Sec. 33, N½NE¼ and NW¼;
- Sec. 34, NW¼NE¼, N½NW¼, and SE¼ NW¼.

The areas described aggregate 4,680.24 acres in Harney County.

2. The United States did not acquire any mineral rights with the following land:

WILLIAMETTE MERIDIAN

T. 33 S., R. 33 E.,
Sec. 16, S½NE¼, SE¼NW¼, SE¼SW¼, and SE¼.

3. All the minerals in the following described lands were and continue to be in United States' ownership and open to operation of the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws:

WILLIAMETTE MERIDIAN

T. 34 S., R. 32¾ E.,
Sec. 1, lots 1 and 2, S½NE¼, S½SW¼, and SE¼;
Sec. 2, S½SE¼;
Sec. 12, N½N½.
T. 33 S., R. 33 E.,
Sec. 20, S½S½;
Sec. 21, SE¼NW¼ and SE¼SE¼;
Sec. 22, SE¼SW¼, E½SE¼, and SW¼SE¼;
Sec. 23, SW¼SW¼;
Sec. 26, NW¼NW¼ and SW¼SW¼;
Sec. 28, S½SW¼;
Sec. 29, N½N½ and SW¼SW¼;
Sec. 32, SE¼NE¼, NW¼NE¼, and NE¼NW¼;
Sec. 33, N½NE¼, NE¼NW¼, and S½NW¼;
Sec. 34, NW¼NE¼, N½NW¼, and SE¼NW¼.

4. The subject lands are located on the western slope of Steens Mountain approximately 70 miles south of the City of Burns. Elevation ranges from 6,000 to 9,000 feet above sea level, and the topography is characterized by three glaciated gorges, containing the Little Blitzen River, Big Indian Creek, and Little Indian Creek, with moderately steep to very steep slopes. Vegetation consists primarily of native brush and grasses with large stands of aspen and willow near the streams. In the past, the lands have been used for livestock grazing purposes. The lands will be managed, together with adjoining national resource lands, for multiple use.

5. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open (except as provided in paragraphs 2 and 3 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10 a.m., February 26, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

6. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2802 Filed 1-27-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA-203-2]

CERTAIN ALLOY TOOL STEEL

Change of Date of Hearing

Notice is hereby given that the public hearing in this matter previously scheduled for January 25, 1977, has been rescheduled to begin at 10 a.m., e.s.t., on Monday, January 31, 1977 in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street, NW., Washington, D.C.

Notice of the investigation and the hearing was published in the FEDERAL REGISTER of January 19, 1977 (42 FR 3715).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2739 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Deletion of Agenda Items

At its meeting of January 24, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.38, voted to delete the following items from its agenda for the meeting of January 24, 1977:

4. Status report on self-initiated studies;
6. Sugar (Inv. TA-201-16)—briefing by the staff (to be held after 3 p.m., EST);
8. Footwear (Inv. TA-201-18)—further consideration of the Commission's determination, if necessary.

Commissioners Minchew, Leonard, Bedell, and Ablondi voted by unanimous consent that Commission business requires the change in subject matter by deletion of these agenda items, affirmed that no earlier announcement of the deletion of these agenda items were possible, and directed the issuance of this notice at the earliest practicable time. (Commissioners Parker and Moore were not present for the vote.)

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2740 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 21, 1977, beginning at 5:15 p.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C., 20436. The Commission plans to consider the following agenda item in open session:

1. Sugar (Inv. TA-201-16)—see memorandum from the General Counsel of January 21, 1977, subject: "U.S. International Trade Commission v. American-Maize Products Company et al.", Misc. No. 77-0005.

Commissioners Minchew, Parker, Leonard, Moore, and Bedell determined by recorded vote that Commission business requires that the meeting of January 21, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time. (Commissioner Ablondi was not present during the vote.)

If you have any questions concerning the agenda for the January 21, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 21, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2741 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 27, 1977, beginning at 11 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C., 20436. The Commission plans to consider the following agenda item:

1. Reorganization.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi determined by recorded vote that Commission business requires that the meeting of January 27, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the January 27, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523–0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17–201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 27, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 1) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant
Charles R. Ramsdale, Acting Director, Personnel
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)
Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 27, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d) (1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37 (b) (2) and (6).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-2742 Filed 1-27-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Emergency Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 28, 1977, beginning at 10 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C., 20436. The Commission plans to consider the following agenda item:

1. Reorganization.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi determined by recorded vote that Commission business requires that the meeting of January 28, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the January 28, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523–0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17–201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 28, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 1) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant
Charles R. Ramsdale, Acting Director, Personnel
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)
Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 28, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b (d) (1) and in conformity with proposed 19 CFR 201.37(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and proposed 19 CFR 201.37(b) (2) and (6).

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-2743 Filed 1-27-77;8:45 am]

PRELIMINARY DRAFTS OF PARTS OF AN ENUMERATION OF ARTICLES TO PROVIDE FOR COMPARABILITY AMONG U.S. IMPORT, PRODUCTION, AND EXPORT DATA

Release for Public Comment

Notice is hereby given that the United States Departments of the Treasury and Commerce and the United States International Trade Commission are releasing for public comment the following preliminary drafts of parts of an enumeration of articles which will provide for comparability among U.S. import, production, and export data pursuant to section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), as amended by section 603(a) of the Trade Act of 1974 (19 U.S.C. 2101):

Nonmetallic minerals and products, except ceramic products and glass and glass products—schedule 5, part 1, *Tariff Schedules of the United States Annotated* (TSUSA);
Luggage; women's and children's handbags; and billfolds, card cases, coin purses, and similar flat goods—schedule 7, part 1D, *TSUSA;*

Motion pictures; tape recordings, phonograph records and other recordings; recording media; scrap and waste photographic film—schedule 7, part 2G, *TSUSA;* Fishing tackle; wheel goods; games and sporting goods; models; dolls, toys, party favors—schedule 7, part 5, subparts B, C, D, and E, *TSUSA.*

Background. The preparation of the drafts by the three agencies has generally proceeded from recommendations made in a joint report of the Secretary of Commerce and the U.S. International Trade Commission, dated August 1, 1975, submitted to Congress and the President pursuant to section 608(b) of the Trade Act of 1974, and entitled "Principles and Concepts Which Should Guide the Organization and Development of an Enumeration of Articles Which Would Result in Comparability of U.S. Import, Production, and Export Data."

The report noted that the principal advantages of achieving comparability among import, production, and export data are—

1. To permit the development and implementation of a more coordinated and efficient program for the administration, interpretation, and maintenance of national systems;
2. To improve and facilitate the publication of trade data most useful for international economic analysis;
3. To permit more reliable analysis of the impact of external trade on domestic industry.

In making specific recommendations concerning the organization and development of an enumeration of articles which would result in comparability, the report recognized various prerequisites to achieving comparability, such as adhering to sound nomenclature principles, employing identical descriptive techniques and product definitions, using compatible standards of valuation and measurement, and providing for centralized responsibility for interpretation and coordinated responsibility for maintenance. The report also acknowledged many of the practical considerations involved in achieving comparability among the three generally discordant classification systems presently used for the collection of import, production, and export data, including reconciling differences among the three existing systems, preserving statistical continuity, and achieving useful levels of product comparability with the least disruptive impact on current programs and reporting.

In summary, the specific recommendations provided that—

1. The organizational framework of the TSUS should be adopted as the basis for the enumeration of the export schedule.
2. The review and development of an enumeration should take into account the current import, production, and export product classes, with the primary aim of obtaining comparability at a common level.
3. Changes may be proposed to any system, including combinations, subdivisions, and modifications of existing language and content. In particular, consideration should be given to updating of definitions and terms to make them more reflective of current practice in the trade. It must be borne in mind that the TSUS structure and detail are legally based. Therefore, the enumeration should consist of individual TSUSA classifications, or combinations of individual TSUSA classifications (current or as proposed by this program), since this is the only way to attain comparability to the relatively rigid classifications of imports. Combinations may be made of commodities falling in different TSUS classes, if necessary, as long as they consist of aggregations of individual TSUSA classifications.

Continuing program for statistical annotation. The establishment of an enumeration for statistical purposes is, and should be looked upon as, a continuing program. It is intended that the initial modifications to the import, production, and export schedules will serve as a basis for further refinement and change. Modifications to each of the systems will be made from time to time to reflect changing statistical needs and also to improve the comparability of U.S. trade data with trade data reported by other countries on the basis of the Standard International Trade Classification (SITC). The publication of trade data by the Department of Commerce on the basis of the SITC will continue.

Modifications to the Tariff Schedules of the United States. Any proposals to modify the TSUS (other than statistical annotations thereto) could not be implemented without legislative approval. After comments have been recovered and reviewed, consideration may then be given to the extent of, and need for, amendatory legislation.

Comments by interested parties. Over the next several months further preliminary drafts will be released for public comment and consideration. Interested parties are invited to comment on all aspects of the comparability program. Specific recommendations and proposals are invited with respect to the extent to which the drafts would—

Recognize the specific needs of users of statistics; Facilitate economic analysis; Reflect sound principles of commodity identification and specification; and Impose undue reporting burdens for business establishments.

We would also welcome comments with respect to modifications which would provide greater comparability with the SITC (revision 2).

Copies of the drafts are available from the Chief, Industry and Commodity Classification Branch, Economic Surveys Division, U.S. Bureau of the Census, Washington, D.C. 20233.

Written comments should be submitted at the earliest practicable date, but, to be assured of consideration, not later than 60 days after release of the drafts. Such statements should be submitted to the Chief, Industry and Commodity Classification Branch, at the address shown above.

Issued: January 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2738 Filed 1-27-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-82]

TEXTILE IMPORTS

Probable Domestic Impact of Changing From "Chief Value" Method of Classification to "Chief Weight" Method

In response to a request dated January 5, 1977, by the President of the United States, the United States International Trade Commission instituted an investigation on January 7, 1977, under section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), to determine the probable domestic impact of changing from the current "chief value" method of classifying textile imports to a method by which textiles would be classified according to the fiber that constituted their "chief weight." The full text of the request is as follows:

DEAR MR. CHAIRMAN: Most textile imports composed of two or more fibers currently are classified for tariff purposes according to the value of the component fibers. For example, a cotton-polyester blended shirt is classified as a cotton shirt if the cotton component has a greater value than the polyester component. This practice is consistent with the current General Headnotes of the Tariff Schedules of the United States (TSUS).

The "chief value" method of classifying textile articles has been criticized on the grounds that it is unstable and unduly difficult to administer. It is argued that these problems would not exist if textile articles were classified on the basis of the weight of the component fibers, rather than on the basis of their value.

In order to assist the Executive Branch in deciding whether to recommend a change in the basis for classifying blended textile imports, I hereby request the USITC, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to undertake a study of the probable domestic impact of changing from the current "chief value" method of classifying textile imports to a method by which textiles would be classified according to the fiber that constituted their chief weight. This study should include a consideration of the probable impact of such a change on United States customs procedures, on rates of duty, on reliability of trade data, and on U.S. production, consumption, and marketing of textiles and apparel, as well as any other domestic effects of such a change that the USITC considers relevant.

It is understood that much of the basic data that the USITC will require for this study will have to be developed by the Customs Service in connection with the processing of import entries. I am, therefore, requesting the Secretary of the Treasury to ensure that the USITC has the assistance and cooperation of the Customs Service in the conduct of this study.

I further request that this study be completed as quickly as possible, and that the results be reported to the Chairman of the Textile Trade Policy Group, the Special Representative for Trade Negotiations, for receipt on the President's behalf. Following receipt of this report, the interagency Textile Trade Policy Group will review the legal and policy effects of changing to a "chief weight" method of classification, including the potential international effects of such a change upon U.S. obligations under the General Agreement on Tariffs and Trade, under the Arrangement Regarding International

Trade in Textiles, and under U.S. bilateral international textile agreements.

Sincerely,

GERALD R. FORD.

HEARINGS

Public hearings in connection with the investigation will be held in Charlotte, N.C., on April 26, 1977, New York, N.Y., on May 10, 1977, Los Angeles, Calif., on May 24 1977, and Washington, D.C., on June 7, 1977. The location of the hearings will be announced later. All interested persons will be given an opportunity to be present, to produce evidence, and to be heard at such hearings. Requests to appear at the public hearings should be addressed to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, and should be received not later than noon of the fifth calendar day preceding the hearing at which an appearance is requested.

WRITTEN SUBMISSIONS

In lieu of or in addition to appearances at the public hearings, interested persons may submit written statements. Any business information which a submitter desires the Commisison to treat as confidential shall be submitted on separate sheets, each clearly marked at the top "Confidential Business Data." All written submissions, except for confidential business data, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date but not later than June 17, 1977. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission:

Issued: January 25, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2885 Filed 1-27-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial asistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924 (b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is caculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other asistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to:

Deputy Assistant Secretary for Employment and Training, 601 D St., NW, Washington, D.C. 20213.

Signed at Washington, D.C. this 24th day of January 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

Applications received during the week ending Jan. 21, 1977

Name of applicant	Location of enterprise	Principal product or activity
Brookwood Lodge, Valley Springs, Inc.	Warrior, Ala.	Alcoholic treatment center.
Mountain Enterprises, Inc.	Artemus, Ky.	Manufacturing of asphalt paving mixtures and paving blocks.
Modern Electric Supply, Inc.	Lawrenceville, Ga.	Wholesale distributor of electrical materials.
Ingersoll-Rand Co. (tenant of town of Davidson).	Davidson, N.C.	Manufacturing of air compressors.
Milla A. Kollinger	St. Marie, Ill.	Nursing home.
Hopedale Service Center	Hopedale, Ill.	Provides storage facilities for material and equipment used in the construction of residential housing and confinement hog houses and other farm buildings.
Jantsen Manufacturing Co.	Beresford, S. Dak.	Fabricate panelized homes and all weather wood foundations and treat lumber under an owned franchise.

[FR Doc.77-2669 Filed 1-27-77;8:45 am]

FEDERAL SUPPLEMENTAL BENEFITS (EMERGENCY UNEMPLOYMENT COMPENSATION)

Availability of Federal Supplemental Benefits in the State of Delaware

This notice announces the beginning of a new Federal Supplemental Benefit Period in the State of Delaware, effective January 23, 1977.

BACKGROUND

The Emergency Unemployment Compensation Act of 1974 (Pub. L. 93-572, enacted December 31, 1974) (the Act) created a temporary program of supplementary unemployment benefits (referred to as Federal Supplemental Benefits) for unemployed individuals who have exhausted their rights to regular and extended benefits under State and Federal unemployment compensation laws. Federal Supplemental Benefits are payable during a Federal Supplemental Benefit Period in a State which has entered into an Agreement under the Act with the United States Secretary of Labor. A Federal Supplemental Benefit Period is triggered on in a State when unemployment in the State or in the State and the nation reaches the high levels set in the Act. During a Federal Supplemental Benefit Period the maximum amount of Federal Supplemental Benefits which are payable to eligible individuals will be up to 13 weeks or 26 weeks, depending upon the level of the rate of insured unemployment in the State.

There is a Federal Supplemental Benefit "on" indicator in a State for a week if the United States Secretary of Labor determines with respect to the State that, (a) there is a State or National "on" indicator for the week, as determined for the purposes of payment of extended benefits under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and (b) the employment security agency of the State has determined that the average rate of

insured unemployment in the State for the period consisting of that week and the immediately preceding twelve weeks equalled or exceeded 5.0 percent. The Federal Supplemental Benefit Period actually begins with the third week following the week for which there is an "on" indicator, and lasts for a minimum period of not less than 26 weeks.

Similarly, an "off" indicator ending a Federal Supplemental Benefit Period occurs in a week when the Secretary of Labor determines that the average rate of insured unemployment (as determined by the State employment security agency) for the period consisting of that week and the immediately preceeding twelve weeks is less than 5.0 percent. The Federal Supplemental Benefit Period actually ends with the third week after the week in which there is an "off" indicator, but not earlier than the end of the twenty-sixth week of the period.

DETERMINATION OF "ON" INDICATOR

The Secretary of Labor has determined under section 203(d) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and 20 CFR 615.13(a), (Title 20 of the Code of Federal Regulations, § 615.13 (a)), that there is a National "on" indicator in effect which is applicable to every State, as announced in the notice published in the FEDERAL REGISTER on February 21, 1975, at 40 FR 7722. The employment security agency of the State of Delaware has determined under the Act and 20 CFR 618.19(a)(2) (published in the FEDERAL REGISTER on March 23, 1976, at 41 FR 12151, 12157) that the average rate of insured unemployment in the State for the period consisting of the week ending on January 8, 1977, and the immediately preceding twelve weeks equalled or exceeded 5.0 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 618.19 (a), and as authorized by the Secretary of Labor's Order 4–75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a Federal Supplemental Benefit "on" indicator in the State of Delaware for the week ending January 8, 1977, and that a Federal Supplemental Benefit Period therefore commenced in that State with the week beginning on January 23, 1977.

INFORMATION FOR CLAIMANTS

There will be a 5-per centum period in effect in the new Federal Supplemental Benefit Period, commencing at the beginning of the new period. During the 5-per centum period an individual who is eligible for Federal Supplemental Benefits will be entitled to a maximum amount of up to 13 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

In the event that a 6-per centum period subsequently takes effect in the new Federal Supplemental Benefit Period, because the rate of insured unemployment in the State has risen to an average of 6.0 percent or more over a period of thirteen weeks, the maximum amount of Federal Supplemental Benefits payable to an eligible individual will increase. In that event an eligible individual will be entitled to a maximum amount of Federal Supplemental Benefits of up to 26 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

The State employment security agency will furnish a written notice of potential entitlement to Federal Supplemental Benefits to each individual who is an "exhaustee" (as defined in the Act and 20 CFR 618.5) of regular and extended benefits payable under State and Federal unemployment compensation laws, and to each individual who has a previously established Federal Supplemental Benefit Account in which there is any balance as of the beginning of the new Federal Supplemental Benefit Period. The State employment security agency also will furnish a written notice to each individual for whom a Federal Supplemental Benefit Account has been established, of the beginning or ending of a 6-per centum period in the new Federal Supplemental Benefit Period, and its effect on the individual's entitlement to Federal Supplemental Benefits.

Persons who believe they may be entitled to Federal Supplemental Benefits in the State of Delaware, or who wish to inquire about their rights under this program, should contact the nearest State Employment Office of the Delaware Department of Labor in their locality.

Signed at Washington, D.C., on January 24, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.77-2872 Filed 1-27-77;8:45 am]

Occupational Safety and Health Administration

REVIEW AND EVALUATION OF NIOSH CRITERIA DOCUMENTS

Procedures for Review; Request for Information on Cadmium

•*Purpose.* This notice describes the procedures that will be followed by the Occupational Safety and Health Administration (OSHA) in evaluating NIOSH criteria documents and, where appropriate, in developing proposed standards on the basis of these criteria documents. This document also requests information from the public in relation the NIOSH criteria document for cadmium, with special attention to areas where additional information is needed.•

INTRODUCTION

Under section 20(a)(3) of the Occupational Safety and Health Act of 1970 (84 Stat. 1610, 29 U.S.C. 669), the Secretary of Health, Education and Welfare, acting through the National Institute for Occupational Safety and Health (NIOSH), is directed to:

Develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

In addition, section 22(c) of the Act authorizes NIOSH to develop recommended occupational safety and health standards. These criteria and the recommended standard developed by NIOSH are intended to be a principal source of information to OSHA concerning many aspects of standards proposals. As noted by the United States Court of Appeals for the District of Columbia Circuit in "IUD v Hodgson", 499 F. 2d 467 (D.C. Cir. 1974), while NIOSH criteria documents do not address all of the elements relevant to OSHA rulemaking and while OSHA is to consider all of the information available to it, the NIOSH recommendations were intended to be an important aid of OSHA in the rulemaking process.

PROCEDURE

As of December 31, 1976, NIOSH has transmitted a total of 57 criteria documents to OSHA (see Appendix A) for consideration as the basis for the development of mandatory occupational safety and health standards. OSHA has initiated rulemaking on a significant number of the hazards identified by the Criteria Documents, and in some instances published Advance Notices of Rulemaking or Notices of Receipt of Criteria Document in order to elicit public comment on key issues during the early stages of the respective proceedings, and to encourage public involvement in determining the appropriate course of regulatory action and in the formulation of future proposed standards.

In the past year, NIOSH has published as many criteria documents as had been published in the preceding years of its existence. This rate of criteria document development is expected to continue. OSHA recognizes the need to establish rational priorities for the initiation of rulemakings on the basis of the NIOSH recommendations. We further recognize that public comment on the relative need for OSHA standards on the hazards addressed by the NIOSH criteria document can be of substantial benefit in setting these priorities. Therefore, OSHA proposes the continued use of Advance Notices of Proposed Rulemaking, published on a routine basis as new criteria documents are received, to invite public comment on the need for OSHA rulemakings to establish mandatory standards, and if standards should be deemed necessary, on the relative priority of developing these standards. We believe such a procedure will assist OSHA in determining the best allocation of its staff resources to address the most serious hazards. We also believe that the Advance Notice should continue to identify key issues on which data and other

information are requested from the public to be used in the development of proposed standards. There have been a number of recent criteria documents for which OSHA has not published any notice of receipt or other advance notice of rulemaking. Beginning with this notice, OSHA will publish notices in the FEDERAL REGISTER for all criteria documents received to date and will continue to publish such notices as new recommendations are received.

In addition to noting the availability of new criteria documents containing NIOSH's recommended standards for occupational exposure to toxic substances or other work place hazards, the notices will summarize the hazards presented; the types and extent of use; the major affected parties, as identified in the criteria document; the source of the present standard; the NIOSH recommended standard; and the basis for the recommended standard. While public comment is invited on any issue raised by the NIOSH recommendations, comment and information are specifically requested on the following issues to assist OSHA in fulfilling its responsibilities:

1. Whether the criteria document adequately demonstrates the need for and appropriateness of regulating this substance or other hazard.
2. What benefits are expected to result from the regulation, i.e., what mortality and morbidity are associated with current exposures, and to what extent would that be reduced by the recommended standards.
3. Are affected industries and employee groups, number of employees exposed, and conditions of exposure correctly described in the criteria document.
4. Description of current engineering and work practice controls for major affected processes/industries.
5. What is the technological and economic feasibility of the NIOSH recommendations (e.g., control measures, methods of measurement)?
6. Whether the sampling and analytical methods recommended are appropriate and can be feasibly complied with by affected employers.
7. What are the environmental impacts of the recommended standard?

These comments will become part of the record of rulemaking which will be used in deciding on the appropriate course of regulatory action, if any, for each criteria document and will also assist in preparing the proposed standards for those hazards chosen to be addressed in an OSHA standards development project.

CADMIUM—BACKGROUND

Cadmium, atomic number 48 and atomic weight 112.40, is a metallic element with a silver-blue-white appearance. It is soft and ductile and highly corrosion resistant due to the formation of the oxide which resists further oxidation. Cadmium is mined in conjunction with other metals, principally zinc. Cadmium occurs in nature as cadmium sulfide, or greenockite, which is the most common cadmium ore, although it is found in economically recoverable form only with the sulfides of other metals (e.g. zinc sulfide). Cadmium is obtained as a by-product of zinc, lead-zinc, and cooper-lead-zinc ore refining.

NIOSH estimates U.S. cadmium production in the 1961–70 period to be 4.2 to 6.9 million kilograms. Electroplating accounts for 45–60 percent of cadmium use. About 1 million kg/year are used for stabilizers for plastics, particularly polyvinyl chloride. A like quantity is used for pigments. One quarter to one half million kilograms of cadmium are used annually as an alloying agent in low-melting-point brazing alloys, in copper for automobile radiators, in silver-cadmium electrical contacts and in other alloys. These uses account for 80–90 percent of cadmium consumption. Other minor uses include nickel-cadmium batteries, fungicides, photograph, and television picture tubes.

Dusts, fume, and mists of cadmium are commonly present in smelting processes involving zinc, copper, and lead as well as in specific processes for extracting cadmium, according to NIOSH.

NIOSH estimates that there are 100,000 workers potentially exposed to cadmium in the occupations listed in Table I.

TABLE I—POTENTIAL OCCUPATIONAL EXPOSURES

Alloy makers
Aluminum solder makers
Battery makers, storage
Cadmium compound collecting bag cleaners
Cadmium compound collecting bag handlers
Cadmium plates
Cadmium smelters
Cadmium vapor lamp makers
Cadmium workers
Ceramic makers
Dental amalgam makers
Electric instrument makers
Electroplaters
Engravers
Glass makers
Incandescent lamp makers
Lithographers
Lithopone makers
Metalizers
Paint makers
Paint sprayers
Photoelectric cell makers
Pigment makers
Small arms ammunition makers
Smoke bomb makers
Solderers
Solder makers
Textile printers
Welders, cadmium alloy
Welders, cadmium plated object
Zinc refiners

EFFECTS OF CADMIUM EXPOSURE

Numerous toxic effects resulting from exposure to cadmium or cadmium compounds reported in the scientific literature are cited in the NIOSH document. Clearly demonstrated effects include anemia, kidney dysfunction, and pulmonary changes including emphysema. Less clearly demonstrated effects, cited by NIOSH, include effects on the gonads, adrenal glands, thyroid, pancreas, and the liver.

Exposure to cadmium can result in kidney malfunction characterized primarily by proteinuria (Ref. 54, 55, 65).[1] This may be a sign of decreased tubular reabsorption although the precise etiology is unknown. Although other evidence of renal tubular dysfunction such as glucosuria and amino aciduria, have been reported, proteinuria is the most common abnormality found in exposed workers and is probably the earliest sign of renal dysfunction in cadium intoxication.

Pulmonary effects can result from both acute and chronic cadium exposure. Acute effects result from exposure to cadium fume of several milligrams per cubic meter concentration and consist of the delayed (4–10 hours) appearance of dyspnea, cough, and the feeling of chest constriction. Substernal pain, chills and myalgia may also be present. In most cases the symptoms resolve within one week, although, in about 20% of the people exposed, the dyspnea is progressive and wheezing and hemoptypsis may develop. Pulmonary edema and interstitial pneumonia may occur. In progressive cases, death characteristically occurs within the first week after exposure. A probable lethal concentration of cadmium oxide fume is about 5 mg/m³ during an 8-hour period (equivalent to 2,400 mg-min/m³). Chronic sequelae include pulmonary fibrosis and "honeycomb lung." Changes may occur in the muscles of the pulmonary and bronchial blood vessels.

Chronic cadmium inhalation has been reported to cause pulmonary emphysema in humans (Ref. 53–56, 59). The exposure times varied in these studies from 2 years to 39 years. Other studies cited by NIOSH have reported no pulmonary effects from chronic cadmium intoxication (Ref. 61–64), but as NIOSH states, at least some of these involved exposures at lower concentrations or for shorter exposure times.

Anosmia (loss of the sense of smell) and hyposmia (reduced sensitivity to smells) are other potential consequences of cadmium exposure reported by NIOSH (Ref. 55, 65, 78, 79). As with lung and kidney damage, duration and concentration of exposure are probably important factors. Although concurrent nickel exposures were reported in some of the studies (55, 65, 78) one study reported insensitiveness to smells without evidence of nickel exposure (79).

Moderate anemia has been described in workers exposed for a long time to cadmium oxide dust and fume (38, 55, 61). No bone marrow pathology was found in one group of workers (Ref. 55).

The possible role of cadmium in hypertension is unclear. Studies cited by NIOSH have shown a positive correlation between cardio-vascular disease and ambient cadmium levels (82) and hypertension and urinary cadmium (83). Higher than normal kidney cadmium levels were found at autopsy in 17 adults who were hypertensive (84). NIOSH states, however, that "no definitive relationship between cadmium levels in the kidney and cardiovascular disease has been demonstrated."

Cadmium has been reported to cause certain bone changes (Ref. 34, 71) and

[1] Numbers are reference cited in the NIOSH criteria document.

back and extremity pain (Ref. 38). The bone changes, similar or identical to osteomalacia (softening of bone) are of unknown etiology, although impaired renal tubular regulation of calcium/phosphorus balance may be responsible (Ref. 1).

The "Itai-itai" (ouch-ouch) disease reported by several investigators (Ref. 1, 7, 40, 41, 89) which occurred in certain areas of Japan may be due to contamination of crops and water with industrial wastes containing cadmium. The disease is apparently osteomalacia and involves painful joints and bones, especially in the back and legs. Other factors, such as diet and hormone levels, may also play a role.

The development of a yellow ring at the neck of the tooth was cited by NIOSH to have been reported in early epidemiologic studies of cadmium exposed workers and was at one time suggested to be a warning sign of chronic cadmium poisoning. The etiology and significance of this effect remains unclear.

One study (Ref. 55), cited by NIOSH, reported abnormal liver function tests in workers exposed to cadmium oxide dust for a mean exposure time of 20 years. This was considered as an unusual finding and the extent of liver abnormalities in exposed workers is unknown.

Studies in animals have suggested that cadmium may exert some destructive effect on the gonads (Ref. 91, 92, 162). These studies found testicular necrosis in rats after injection of cadmium chloride solution. Other studies reported by NIOSH, demonstrated that injection of cadmium had a sterilizing effect on the ovaries of rats and gerbils (Ref. 166–169). One study (Ref. 94) reported high levels of cadmium in the tests of men exposed to cadmium fume. NIOSH cautions, however, that further study is necessary before any conclusion can be drawn concerning the possible effects of cadmium on gonadal function in workers exposed to cadmium.

A Russian study, cited by NIOSH, reported reduced birth weights in children born to mothers who had been occupationally exposed to cadmium (Ref. 95). Teratological effects of cadmium have been demonstrated in animals. Severe malformations (e.g., anophthalmia, microphthalmia, hydrocephaly, renal agenesis) have been reported after injection of rats, mice, or hamsters with cadmium chloride (Ref. 172–176). One study (Ref. 174) found no increased rate of malformations in mice at a dose of 0.33 mg/kg but did find a dose-related increase at higher doses (0.63 mg/kg, 2.5 mg/kg, and 5 mg/kg).

Chromosomal damage due to cadmium has also been studied. Male mice were killed 3 months after mating to ascertain fertility, and dividing spermatocytes were examined for chromosomal rearrangements but none were found. In humans, no significant differences in chromosomal aberrations were found in exposed and control groups from Sweden and Japan (Ref. 111). In leukocytes, from Itai-itai patients, cultured in vitro, and in human leukocytes, cultured with cadmium sulfide, increases in chromosomal aberrations were found (Ref. 112, 113). An increased incidence of aberrations was found in chromosomes cultured from leukocytes of workers exposed to cadmium, zinc, and lead (Ref. 114). The effects of such mixed exposures are difficult to interpret as pointed out by both the authors of the study and NIOSH.

NIOSH included a report of one study which concluded that cadmium exposure can cause central nervous system changes (Ref. 116). Changes in cutaneous, optical and motor nerve chronaxy were reported.

The carcinogenic potential of cadmium has been examined in both exposed human populations and in experimental animals.

Surveys of cadmium workers have indicated that cancer of the prostate may be more frequent in these groups than in the general population (Ref. 65, 96). In one study (Ref. 65), 74 men with greater than 10 years exposure were surveyed. There were 8 deaths in this group, 3 from prostate cancer. In another study (Ref. 96), 4 prostate cancer deaths were found in a cohort of 248 workers. This is significantly more than expected. There may be some overlap in these two studies and one group of investigators, quoted by NIOSH, warned against drawing conclusions until further studies are done (Ref. 96). A study of 92 deaths among 292 cadmium smelter workers revealed 4 prostate cancers compared to 1.15 expected (Ref. 97). This was not considered significant. If only workers alive 20 years after their first exposures were considered 0.88 deaths would have been expected vs. the 4 observed. This was reported to be significant at the 0.05 level.

NIOSH states that these studies are suggestive of a link between occupational exposure to cadmium and prostate cancer but that the number of cases are small and some of these studies may be overlapping.

A significant excess (12 obs. vs. 5.11 exp.) of cancer of the respiratory tract has been reported in workers exposed to cadmium (Ref. 97). These authors also noted a significant excess of all neoplasms (27 obs. vs. 17.5 exp.).

In a study of patients hospitalized due to suspected neoplastic disease, Kolonel (Ref. 101) found a significant increase in renal cancer and a nonsignificant increase in pancreatic cancer in patients through to have had cadmium exposure. No increase in prostate cancer was found. NIOSH views the result of this study as uncertain due to the deficient occupational histories.

Elevated blood and tissue cadmium levels were found in lung cancer patients in a study by Morgan (Ref. 103). But whether this was a cause or effect is unknown.

Cadmium chloride produced tumors at the injection site in 3 of 30 rats 12–16 months post-injection (Ref. 182). Injection site sarcomas have also been induced by suspensions of cadmium oxide, sulfide, sulfate, and metal powder (Ref. 183–187). Cadmium chloride injection of 30μ mole/kg also caused interstitial cell tumors of the testes (Ref. 188, 189). No increase in tumors occurred in rats given drinking water containing 5 ppm cadmium acetate. (Ref. 192). No increase in prostate cancer was found in rats and mice given cadmium sulfate by injection or intragastric catheter (Ref. 105–107). Testicular changes and Leydig cell tumors did occur but no prostate neoplasms or preneoplastic changes occurred in either rodent species.

The International Agency for Research on Cancer (IARC) reviewed the potential carcinogenicity of cadmium. The IARC review, cited by NIOSH, suggested that the data were insufficient to permit conclusions on whether or not cadmium is carcinogenic.

Basis of the Current Standard

The present OSHA standard for cadmium fume is an 8-hour average of 0.1 mg/m^3 with a ceiling concentration of 0.3 mg/m^3. The standard for cadmium dust is an 8-hour average of 0.2 mg/m^3 with a ceiling concentration of 0.6 mg/m^3 (29 CFR 1910:1000, Table Z–2). The standard was originally developed in 1941, by the American Standards Association (now American National Standards Institute, or ANSI) as an American Defense Emergency Standard of 1 mg/m for cadmium and its compounds. ANSI revised the standard in 1970 to the present levels (ANSI Z37.5) which was subsequently adopted by OSHA under section 6(a) of the Occupational Safety and Health Act of 1970. The ANSI report briefly reviewed cadmium toxicity but the specific basis for the standard was not stated.

In 1946, the American Conference of Governmental Industrial Hygienists (ACGIH) recommended a Maximum Allowable Concentration (MAC) Value of 0.1 mg/cu m for cadmium, continuing it for several subsequent years but changing the name MAC Values to Threshold Limit Values (TLV's) in 1948 (these 1946–1949 MAC or TLV lists were unpublished but privately circulated). In 1956, the TLV of 0.1 mg/cu m was assigned to CdO fume, rather than Cd. In 1965, a tentative value of 0.2 mg/cu m for cadmium (metal dusts and soluble salts) was added, and changed to a recommended value in 1967. More recently, the ACGIH recommended several changes in the TLV's of cadmium dusts and fumes. In 1970, the TLV of cadmium dusts and salts was continued at 0.2 mg/cu m as a ceiling. In 1973, the ACGIH announced its intent to change the TLV of fume to 0.05 mg/cu m, also as a ceiling. In 1974, the intention to change the TLV of cadmium dusts and salts to 0.05 mg/cu m as a TWA concentration was announced. In 1975, a note was added indicating that cadmium oxide production involved a carcinogenic or co-carcinogenic potential. In a supplement to the 1971 TLV documentation, a review by Bonnell and the report of Tsuchiya were cited as reasons for a lowering of the TLV of cadmium fume to a ceiling con-

centration to 0.05 mg Cd/cu m. The basis for indicating that there is a carcinogenic or co-carcinogenic potential in cadmium oxide production was not stated.

Several foreign countries have set limits for exposure to cadmium. Some of the limits, reported by NIOSH, are 20μg/m³ for dust and 10 mg/m³ for fume in Finland; 0.05 mg/m³ total and 0.02 mg/m³ (respirable) in Sweden; and 0.1 mg/m³ for cadmium oxide in the USSR. Bulgaria, Czechoslovakia, Hungary, Japan, Poland, and Rumania all have adopted 0.1 mg/m³ for cadmium or cadmium oxide.

BASIS FOR THE RECOMMENDED STANDARD

The environmental limit recommended by NIOSH for exposure to cadmium is a time-weighted-average (TWA) concentration of 40μg/m³ and a 15 minute ceiling limit of 200μg/m³. A 1967 report by Tsuchiya (Ref. 63), cited by NIOSH, recommended a TWA of 50μg/m³. This author did state that this limit may only be valid for Japanese workers. A limit of 50μg/m³ was suggested in another study, by Lauwerys, et al (Ref. 133), which found no effects in workers exposed at 31μg/m³ and proteinuria and reduced pulmonary function in workers exposed at 66μg/m³. NIOSH cautions that the presence of toxic effects at the 66μg/m³ level suggests that a limit of 50μg/m³ would not have a large safety factor. NIOSH notes further that it is possible that workers exposed at 66μg/m³ were also exposed to higher concentrations but this is uncertain. A study by Piscator (Ref. 131) found no effects in a group of women workers exposed to less than 100μg/m³ (mostly about 40μg/m³). One elderly woman was found to have proteinuria but that was attributed to earlier exposures at higher levels.

Because of the low margin of safety afforded by a limit of 50 μg/m³, NIOSH recommends a limit of 40 μg/m³. NIOSH reports that it appears likely that the threshold for the development of adverse effects on pulmonary function is higher than the threshold for adverse effects on renal function, this has not been clearly established. The recommended limit is intended to protect against the development of renal damage. The recommended medical surveillance protocol for exposed employees includes examinations of both renal and pulmonary function.

The recommended ceiling limit of 200 μg/m³ for 15 minutes is based on evidence of acute pulmonary disease at 2,500–2,900 mg-min/m³ (about 5 mg/m³ for 8 hours). NIOSH reported that there have been cases of exposures up to 25 mg/m³ without acute pulmonary disease but such instances may have been only very brief exposures or exposures may have been to primarily non-respirable dust. Another study NIOSH cites, reported acute cadmium intoxication at an estimated concentration range of 10–140 μg/m³ for a cumulative exposure of almost 10 hours. Because of the contradictory evidence, NIOSH recommends a ceiling limit based on what NIOSH believes to be realistic limitations on excursions and the belief that acute pulmonary disease, possibly fatal, can develop at around 2500 mg-min/m³.

Although there is some evidence of the teratogenic effect of cadmium in both experimental animals and humans (see Effects of Exposure), the data, particularly in humans, NIOSH believes to be incomplete. NIOSH states that human fetal abnormalities may be related to zinc retention in the mother caused by cadmium absorption which created a zinc deficiency in the fetus. Injection of zinc into pregnant rats has been reported to exert a protective effect on the fetuses against the development of cadmium-induced abnormalities (Ref. 177, 178). NIOSH, therefore, concludes that reduction of cadmium exposure to a level that does not result in abnormal zinc requirements should allow sufficient zinc to the fetus for normal development. This has not been proven and NIOSH suggests further research be done.

The data on the potential carcinogenicity of cadmium is contradictory. Among men working with cadmium, small numbers of cases of prostatic cancers, mainly in the elderly, have been found (Ref. 65, 96, 97). Other epidemiologic studies (Ref. 101, 102) and animal studies (Ref. 105–7) have not found excess prostate cancers. These studies are considered inadequate by NIOSH as the human subjects were not known to have had cadmium exposure and the animals were not given large enough doses of cadmium. The findings of excess total cancers and lung cancers among cadmium smelter workers is confounded by the concomitant exposure to arsenic. (Ref. 97.) Due to the uncertainties of the presently available data on the carcinogenicity of cadmium, NIOSH did not feel that a limit based on this effect was appropriate.

The NIOSH recommended limits for cadmium are based on total dust sampling and not limited to only the respirable portion. NIOSH feels that large particles of cadmium and its compounds, while not reaching the alveoli, may still be toxic because they may be cleared from the upper respiratory tract and swallowed and be absorbed through the gastrointestinal tract.

The past and present standards for cadmium have separate limits for dust and fume due to the greater penetrability in the lungs of the smaller fume particles. The recommended standard does distinguish different forms of cadmium. NIOSH states that the evidence of proteinuria in populations exposed to either dust or fume demonstrates that the effects found are comparable at similar concentrations of either form of cadmium. NIOSH feels that the data does not show that a given amount of cadmium is more toxic as small particles than as large particles; therefore, a standard expressed as total dust is an effectively lower standard and is therefore more protective. Lack of good data precludes NIOSH from recommending different standards for different compounds of cadmium based on their individual toxicities.

PUBLIC PARTICIPATION

In addition to the general issues, listed under Introduction, on which comment and information are requested, OSHA requests comment and information on the following specific issues raised by the NIOSH recommendations for a standard for occupational exposure to cadmium:

The exposure limit recommended by NIOSH is based on protection against kidney damage—is this a correct approach?

Are there other significant toxic effects of cadmium not discussed in the NIOSH criteria document?

Is the evidence sufficient for cadmium to be considered a teratogen and/or a carcinogen? If so, what steps should be taken to protect exposed workers?

Should all forms of cadmium be considered in a single exposure limit, as recommended by NIOSH, or should separate standards be set for dust and fume?

Should the cadmium standard be expressed in terms of total particulate, as recommended by NIOSH, or should it be based upon only the respirable fraction?

Are the NIOSH recommendations for limiting employee exposure to cadmium technologically and economically feasible? If not, what alternatives are appropriate?

Are there effective substitutes which can be used to replace cadmium in some of its applications?

Is the NIOSH estimate of exposed workers (100,000) accurate?

Are there employee groups not listed which are potentially exposed to cadmium?

The NIOSH criteria document, all references, and comments on the document from the NIOSH review consultants and other groups (Tab Document) are available for review and copying at the OSHA Technical Data Center at the address listed below for the Docket Officer. The NIOSH recommendations are reprinted in Appendix B.

Comments should be addressed to Docket Officer, Docket HO57, Department of Labor—OSHA, Room N3620, 3rd and Constitution Avenue, NW., Washington, D.C. 20210, and should be submitted by March 20, 1977.

Dated at Washington, D.C., this 19th day of January 1977.

MORTON CORN,
Assistant Secretary of Labor.

APPENDIX A—CRITERIA DOCUMENTS TRANSMITTED TO OSHA

Asbestos: Received January 21, 1972. As a result of a petition to OSHA, an Emergency Temporary Standard on asbestos had been issued on December 7, 1971. Current standard published on June 7, 1972. Proposed revision published October 9, 1975. New NIOSH recommendations received by OSHA on December 15, 1976.

Hot Environments: Received June 30, 1972. OSHA Advisory Committee established on subject on January 24, 1973. Committee recommendations submitted January 11, 1974. Inadequate information on which to establish a mandatory standard.

Beryllium: Received June 30, 1972. Proposed standard published October 17, 1975.

Carbon Monoxide: Received August 3, 1972.

Noise: Received August 10, 1972. OSHA Advisory Committee established on subject on January 26, 1973. Committee recommendations submitted December 20, 1973. Proposed revision to existing OSHA noise standard published on October 24, 1974. Hearings held in June and July 1975, and September and October 1976.
Ultraviolet Radiation: Received December 20, 1972.
Inorganic Lead: Received January 5, 1973. Proposed standard published October 3, 1975.
Coke oven Emissions: Received February 28, 1973. Advisory Committee established August 12, 1974. Committee recommendations submitted May 24, 1975. Proposed standard published July 24, 1975. Final standard promulgated October 22, 1976.
Chromic Acid: Received July 17, 1973. (see Hexavalent Chromium).
Toluene: Received July 23, 1973. Proposed standard published October 6, 1975.
Toluene Diisocyanate: Received July 13, 1973.
Trichloroethylene: Received July 23, 1973. Proposed standard published October 20, 1975.
Inorganic Mercury: Received August 13, 1973.
Inorganic Arsenic: Received January 21, 1974. Proposed January 21, 1975. Hearings held April 1975 and September 1976. Revised Criteria Document received June 23, 1973.
Sulfur Dioxide: Received February 11, 1974. Proposed November 24, 1975.
Sulfuric Acid: Received June 6, 1974.
Ammonia: Received June 15, 1974. Proposed November 25, 1975.
Benzene: Received July 24, 1974.
Chloroform: Received September 11, 1974.
Cotton Dust: Received September 26, 1974. Proposed December 28, 1976.
Silica: Received November 11, 1974.
Identification System for Hazardous Materials: Received December 20, 1974. Advisory Committee established September 19, 1974. Committee recommendations submitted May 24, 1975.
Xylene: Received May 30, 1975.
Inorganic Fluorides: Received June 30, 1975.
Sodium Hydroxide: Received October 9, 1975.
Zinc Oxide: Received October 10, 1975.
Hexavalent chromium: Received December 3, 1975. Combined as single OSHA project with Chromic Acid..
Carbon Tetrachloride: Received January 23, 1976.
Isopropyl Alcohol: Received March 9, 1976.
Methylene Chloride: Received March 9, 1976.
Hydrogen Fluoride: Received March 9, 1976.
Phosgene: Received March 3, 1976.
Nitric Acid: Received March 9, 1976.
Ethylene Dichloride: Received March 9, 1976.
Methyl Alcohol: Received March 22, 1976.
Nitrogen Dioxide: Received March 22, 1976.
Chlorine: Received May 25, 1976.
Methyl Chloroform (1,1,1 Trichloroethylene): Received July 1, 1976.
Perchloroethylene (Tetrachloroethylene): Received July 1, 1976.
Acetylene: Received June 30, 1976.
Malathion: Received June 30, 1976.
Phenol: Received June 30, 1976.
Parathion: Received June 30, 1976.
Carbon Dioxide: Received August 11, 1976.
Cadmium: Received August 24, 1976.
Epichlorohydrin: Received September 17, 1976.
Allyl Chloride: Received September 21, 1976.
Methyl Parathion: Received September 30, 1976.
Carbaryl: Received September 30, 1976.
Cyanide and Cyanide Salts: Received October 5, 1976.
Organotin Compounds: Received November 12, 1976.
Acrylamide: Received December 1, 1976.
Boron Trifluoride: Received December 17, 1976.
Formaldehyde: Received December 30, 1976.

APPENDIX B

1. RECOMMENDATIONS FOR A CADMIUM STANDARD

The National Institute for Occupational Safety and Health (NIOSH) recommends that worker exposure to cadmium in the workplace be controlled by adherence to the following sections. The standard is designed to protect the health and safety of workers for up to a 10-hour workday, 40-hour week over a working lifetime. Compliance with all sections of the standard should prevent adverse effects of ex posure to cadmium on the health and safety of workers. The standard is measurable by techniques that are valid, reproducible, and available to industry and government agencies. Sufficient technology exists to permit compliance with the recommended standard. The criteria and the standard will be subject to review and revision as necessary. "Cadmium" refers to elemental cadmium and all cadmium compounds. An "action level" is defined as half the time-weighted average concentration environmental limit of cadmium. "Occupational exposure to cadmium" is defined as exposure to cadmium at a concentration greater than the action level. Exposure at lower environmental concentrations will not require adherence to the following sections, except for Section 6(b) and 7(d).

SECTION 1 *Environmental (Workplace air)*—(a) *Concentration.* Occupational exposure to cadmium shall be controlled so that workers are not exposed to cadmium at a concentration greater than 40 micrograms per cubic meter of air (40(μ)g Cd/cu m determined as a time-weighted average (TWA) exposure concentration for up to a 10-hour workday, 40-hour workweek, or at a ceiling concentration greater than 200 (μ) g Cd/cu m for any 15-minute sampling period.

(b) *Sampling and analysis.* Sampling in the work environment shall be performed by the method provided in Appendix I or by a method with at least equivalent efficiency. Samples shall be analyzed by the method provided in Appendix II or by a method shown at least equivalent in precision and sensitivity.

SEC. 2 *Medical.* Medical monitoring shall be made available to all workers subject to occupational exposure to cadmium.

(a) Preplacement examinations shall be made available to new or reassigned employees prior to job placement, and, within 6 months of the promulgation of a standard based on these recommendations, to employees already engaged in work involving exposure to cadmium.

Preplacement examinations shall include a comprehensive work and medical history, a 14" x 17" P.A. chest x-ray, measurement of forced vital capacity (FVC) and forced expiratory volume during the first second (FEV 1), measurement of blood pressure, blood analysis (blood urea nitrogen, complete blood count, and serum glutamic ocaloacetate transaminase or other liver enzymes), and urinalysis (microscopic examination, sugar determination, quantitative protein determination, and specific gravity measurements). A judgment of the worker's ability to work in positive or negative pressure respirators shall be made.

The method for protein determination in urine shall be quantitative and capable of detecting low molecular weight protein (see Appendix III). Determination of urine cadmium levels is also recommended.

(b) Periodic examinations shall also be made available, except for urine protein determinations, which shall be made available every 4 months, these examinations shall be offered yearly, or as otherwise directed by the responsible physician.

These periodic examinations shall include interim work and medical history, urinalysis (with quantitative protein determinations every 4 months) pulmonary function tests (FVC and FEV 1), and blood pressure. Chest radiographs shall be taken if judged necessary by the responsible physician.

In addition, blood analysis, palpation of the prostate in male workers over 40 years old, and monitoring of urine cadmium concentrations are also recommended. If the concentration of cadmium in the urine rises above 10 (μ)g/liter, an investigation of the cause, such as environmental exposures, personal and industrial hygiene practices, and nonoccupational exposure, should be conducted.

Reassessment of occupational exposure, work practices, and personal habits shall be undertaken if FVC or FEV 1 becomes reduced 15 percent or more or the ratio FEV 1/FVC is reduced 10 percent or more than would be expected from the age and smoking habits of the person examined, if persistent symptoms of respiratory tract disease develop, if there are frequent upper or lower respiratory infections, or if persistent proteinuia or other abnormal laboratory or clinical findings relatable to cadmium toxicity develop.

Smokers should be counseled on their possibly increased risk of chronic respiratory disease.

(c) At termination of or transfer from employment involving occupational exposure to cadmium, a comprehensive examination including the components of (a) above shall be offered.

(d) Pertinent medical records shall be retained for 20 years after the last occupational exposure to cadmium. These records shall be made available to the designated medical representatives of the Secretary of Labor, of the Secretary of Health, Education, and Welfare, of the employer, and of the employee or former employee.

SEC. 3 *Labeling and Posting*—(a) *Containers.* Shipping and storage containers or package containing cadmium or cadmium compounds shall bear the following label:

DANGER!

CONTAINS _____[1]

POISONOUS FUMES MAY BE FORMED ON HEATING

HARMFUL IF INHALED OR SWALLOWED

AVOID CONTACT WITH SKIN, EYES, AND CLOTHING

WASH HANDS THOROUGHLY AFTER HANDLING

Avoid breathing fume, dust or mist

Keep container closed

Use only with adequate ventilation

(b) Work areas

Locations or areas where cadmium dust or fumes are likely to be generated shall be designated with clearly visible warning signs as shown below:

DANGER!

CADMIUM (Cd)

Cadmium Fume (or Dust) Areas

Authorized Personnel Only

Breathing Fume (or Dust) May Cause Immediate or Delayed Injury

No Smoking

Respirators Are Located _____[2]

[1] Complete by inserting "cadmium" or

[2] Give location of respirators.

This sign shall be printed in English and in the predominant language of non-English-speaking workers. All employees shall be trained and informed of the hazards and the hazardous areas. All illiterate workers shall receive special attention.

SEC. 4. *Personal Protective Equipment.* Engineering controls shall be used if needed to maintain airborne cadmium concentrations at or below the limits recommended in Section 1. Compliance with these workplace environmental limits by the use of respirators is permitted only during emergencies. When use of a respirator is permitted, it shall be selected and used in accordance with the following requirements:

(a) For the purpose of determining the type of respirator to be used, the employer shall measure the concentrations of cadmium in the workplace initially and thereafter whenever control, process, operation, worksite, or climate changes occur that are likely to increase the concentration of airborne cadmium.

(b) The employer shall ensure that no worker is exposed to cadmium in excess of the recommended limits because of improper respirator selection, fit, use, or maintenance.

(c) A respiratory protection program meeting the requirements of 29 CFR 1910.134, which incorporates the American National Standard Practices for Respiratory Protection, Z88.2–1969, shall be established and enforced by the employer.

(d) The employer shall provide respirators in accordance with Table I–1 and shall ensure that employees use the respirators provided in a proper manner when wearing of respirators is required.

(e) Respirators selected from those described in Table I–1 shall be those approved under the provisions of 30 CFR Part 11.

(f) The employer shall ensure that employees are properly instructed in the use of respirators assigned to their use and on how to test for leakage, proper fit, and proper operations.

(g) Respirators specified in Table I–1 for use in atmospheres of higher concentrations of airborne cadmium may be used in atmospheres of lower cadmium concentrations.

(h) The employer shall establish and conduct a program of cleaning, sanitizing, inspecting, maintaining, repairing, and storing of respirators, to ensure that employees are provided with clean respirators that are in good operating condition.

(i) The employer shall periodically monitor the use of respirators to ensure that the proper type of respirator is worn, to evaluate the effectiveness of the respiratory protection program, and to eliminate any deficiencies in use and care of respirators.

Table I–1.—Respirator selection guide

Air concentrations	*Respirator type*
Less than or equal to 0.4 mg/m³.	(1) Half-mask respirator with high efficiency filter(s). (2) Type C demand type (negative pressure) supplied air respirator with half-mask facepiece.
Less than or equal to 2.0 mg/m³.	(1) Full facepiece respirator with high efficiency filter(s). (2) Type C demand type (negative pressure) supplied air respirator with full facepiece. (3) Self-contained breathing apparatus with full facepiece in demand mode (negative pressure).
Less than or equal to 40 mg/m³.	(1) Powered air-purifying (positive pressure) respirator with high efficiency filters. (2) Type C continuous flow (positive pressure) supplied air respirator.
40 mg/m³ or greater or unknown.	(1) Combination supplied air respirator, pressure-demand type, with auxiliary self-contained air supply. (2) Self-contained breathing apparatus with full facepiece in positive pressure mode.

SEC. 5 *Inform Employees of Hazards from Cadmium.*—(a) Workers initially assigned or reassigned to jobs involving occupational exposure to cadmium shall be informed of the hazards, symptoms of overexposure (including information on the characteristics of onset and stages of illness), appropriate procedures to be taken in the event of an emergency, and precautions to ensure safe use and to minimize exposure. They shall be advised of the availability of relevant information, including that prescribed in (c) below. This information shall be accessible to each worker occupationally exposed to cadmium.

(b) A continuing education program, conducted by a person or persons qualified by experience or special training, shall be instituted to ensure that all workers have current knowledge of job hazards, proper maintenance procedures and cleanup methods, and that they know how to use respirators correctly. It shall include a description of the general nature of the medical surveillance procedures and why it is advantageous to the worker to undergo these examinations.

(c) Required information shall be recorded on a "Material Safety Data Sheet" as specified in Appendix IV or on any other form approved for the purpose by the Occupational Safety and Health Administration, U.S. Department of Labor.

SEC. 6 *Work Practices*—(a) *Exhaust Systems.* Operations creating workplace exposure to cadmium shall be enclosed to the maximum extent practicable and be provided with local exhaust ventilation unless appropriate air sampling and analysis have demonstrated that concentrations are at or below the environmental limits. Methods other than enclosure and ventilation for meeting exposure limits to cadmium may be used if they bring concentrations in workplace air to or below the environmental limits. Effluent air shall be cleaned to meet any emission standards that may become promulgated. Air from the exhaust ventilation system shall not be recirculated into the workplace.

Enclosures, exhaust hoods, and ductwork shall be kept in good repair so that design airflows are maintained. Airflow shall be measured at each hood at least semiannually and preferably monthly. Continuous airflow indicators are recommended, such as water or oil manometers properly mounted at the juncture of fume hood and dust throat (marked to indicate acceptable airflow). A log showing design airflow and results of semiannual inspections shall be kept.

(b) *Welding, Brazing, and Thermal Cutting.* Welding, brazing, or thermal cutting of material containing cadmium shall be performed using local exhaust ventilation demonstrated by air sampling and analysis to keep cadmium concentrations within the limits of Section 1. For single operations where local exhaust ventilation is not available, where air sampling has not been performed, or where air sampling has demonstrated a likelihood of overexposure to cadmium fume or dust, respirators shall be provided and worn as specified in Section 4.

Where molten cadmium is used or formed, temperatures should be kept as low as possible consistent with the requirements of the operation to prevent excessive fume generation. Additions of cadmium should be made in the manner generating the least fume. Wherever possible this should be accomplished by automatic controls, with recording of temperature and use of alarms or indicators for higher temperature.

(c) *Emergency Procedures.* Emergency procedures shall be established for any event which may result in substantial release of airborne cadmium. Such procedures shall include provision for appropriate respirators as specified in Section 4.

Specific emergency procedures shall be designed for fires, to protect both in-plant workers and firefighters.

(d) *Work Clothing.* Workers shall wear work clothing consisting at the least of hat, shirt, or blouse, pants or skirt, and shoes. Work clothing and street clothing shall be exchanged at the beginning and the end of each workday, so that work clothing will not be worn outside the workplace. The employer shall provide for proper laundry of clothing and shall instruct launderers on procedures to be taken to avoid inhalation of cadmium-containing dusts.

SEC. 7 *Sanitation Practices.*—(a) Where there is cadmium-containing dust, cleaning should be performed by vacuum pickup or wet mopping. No dry sweeping or blowing shall be permitted.

(b) Emphasis shall be placed upon prompt cleanup of spills, repair of equipment and leaks, proper storage of materials, and collection of cadmium-containing dust.

(c) Cadmium-containing and cadmium-plated metal parts should be kept separate from parts not containing cadmium and marked appropriately so that accidental exposures resulting from welding and cutting will not occur.

(d) Facilities shall be maintained to protect foodstuffs and food consumption areas from contamination by materials containing cadmium. Food storage, handling, and consumption shall be separate from cadmium work areas. Smoking or carrying uncovered tobacco or tobacco products in cadmium work areas shall be prohibited.

(e) Adequate handwashing and shower facilities shall be provided. Workers shall wash their hands before eating or before using tobacco to prevent their absorbing additional amounts of cadmium compounds.

SEC. 8 *Monitoring and Recordkeeping.* Workers are not considered to be occupationally exposed to cadmium if environmental concentrations, as determined on the basis of an industrial hygiene survey to be performed within 90 days of the promulgation of a standard, do not exceed the action level, i.e., half the recommended TWA environmental limit, or if there is no operation, storage, or handling or cadmium in any form or contamination of workplace air by cadmium from other sources. These industrial hygiene surveys shall be repeated at least every 3 years and within 30 days after any process or operating change likely to result in increases of airborne concentrations of cadmium. Records of these surveys, including the basis for concluding that airborne concentrations of cadmium are at or below the action level, shall be maintained until the next survey has been completed.

The following requirements apply to occupational exposure to cadmium, ie, to work-

place where the action level is exceeded.

(a) *Personal monitoring.* A program of breathing zone or personal monitoring shall be instituted to identify and measure the exposure of all employees occupationally exposed to cadmium. This sampling and analysis shall be conducted every 3 months on at least 25 percent of the workers so that each worker's exposure is measured at least every year; this frequency and fraction of employees sampled may be different if so directed by a professional industrial hygienist. Sufficient numbers of samples shall be collected and analyzed to permit construction of valid estimates of the TWA and ceiling concentration exposures of workers during each workshift; the number of TWA and ceiling concentration determinations for an operation shall be based on such factors as mobility and job functions of workers in that operation. If montoring of any worker shows exposure in excess of either recommended environmental limit, additional monitoring shall be promptly initiated. If confirmed, control procedures shall be instituted as soon as possible; these may precede and obviate confirmatory monitoring if the employer desires. Affected employers shall be advised that exposures have been excessive and be notified of the control procedures being implemented. Monitoring of these employees' exposure shall be conducted at least as ofter as every 30 days and shall continue until successive samplings at least a week apart confirm that exposure no longer exceeds recommended limits. Normal monitoring may then be resumed.

(b) *Recordkeeping.* Environmental monitoring records shall be maintained for at least 20 years. These records shall include methods of sampling and analysis used, types of respiratory protection used, and TWA and ceiling concentrations found. Each employee shall be able to obtain information on his own environmental exposures. Environmental records shall be made available to designated representatives of the Secretary of Labor and of the Secretary of Health, Education and Welfare.

Pertinent medical records shall be retained for 20 years after the last occupational exposure to cadmium. Records of environmental exposures applicable to an employee should be included in the employee's medical records. These medical records shall be made available to the designated medical representatives of the Secretary of Labor, of the Secretary of Health, Education and Welfare, of the employer, and of the employee or former employee.

[FR Doc.77-2379 Filed 1-19-77;5:06 pm]

Occupational Safety and Health Administration

[V-77-1]

RICHMOND ENGINEERING COMPANY, INC.

Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that RECO Constructors, Inc., Box 25189, 7th & Hospital Streets, Richmond, Virginia 23260 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance and interim order, pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1926.451 (a) (4), (5), and (10) dealing with scaffolds.

The place of employment affected by the application is as follows:

Richmond Engineering Company, Inc., 7th & Hospital Streets, Richmond, Virginia 23260.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by § 1926.451(a) (4), (5), and (10). Section 1926.451(a) (4) and (5) read as follows:

(4) Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beams scaffolding and floats (see paragraphs (p) and (w) of this section). Scaffolds 4 to 10 feet in height having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

(5) Guardrails shall be 2 x 4 inches, or the equivalent, approximately 42 inches high, with a midrail, when required. Supports shall be at intervals not to exceed 8 feet. Toeboards shall be a minimum of 4 inches in height.

The applicant states that its business is of a specialized nature involving steel plate erectionb y members of the boilermaker's trade.

The applicant contends that the scaffolds used in building tanks are mobile and are frequently raised as are the tank sections, in order to position the next set of steel plates. The scaffolds used do not have toeboards because tools are placed in well designed "loose tool" containers provided for that purpose. In addition, the applicant proposes to rope off the area directly below and in close proximity to the scaffold and to permit only those employees, and tools currently being used by them, on the scaffolds. As a further precaution, a taut wire is installed midway between the innermost plank face of the scaffold platform and the tank face. The applicant states that because the scaffolds must be moved frequently, it would be more hazardous to constantly remove and replace toeboards.

The applicant also proposes to place guardrail supports at 10'6" intervals in lieu of the 8' requirement of § 1926.451 (a)(5). This would allow consistent bracket spacing since the applicant further desires to use 10'6" spans for its scaffold planking although § 1926.451(a) (16) allows a maximum span of 10'. The planks proposed to be used are rough full-dimensioned 2" x 12" x 12' planks of Douglas Fir or Southern Yellow Pine of select structural grade. The Douglas Fir has a fiber stress of 1,900 and a modulus of elasticity of 1,900,000, while the Southern Yellow Pine has a 2,500 fiber stress and a modulus of elasticity of 2,000,000. The applicant contends that the scaffolds he is using are safe, even though the span is one-half foot longer than the maximum length allowed, because of the increased strength of the wood.

A copy of the application will be made available for inspection and copying upon request at the Office of Variance Determination, U.S. Department of Labor, Room N-3668, 200 Constitution Avenue, NW., Washington, D.C. 20210, and at the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building (P.O. Box 10186) Room 8018, 400 North 8th Street, Richmond, Virginia 23240.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the pertinent application no later than February 28, 1977. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than February 28, 1977, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

II. *Interim Order.* It appears from the application for variance and interim order that the proposed scaffolding described in the application, with certain variations, will provide a place of employment as safe as those which would prevail if the applicant were to comply fully with 29 CFR 1926.451(a) (4), (5), and (10). It further appears that an interim order is necessary, pending a decision on the application, in order to prevent undue hardship to the applicant and its employees. Therefore, it is ordered, pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, and 29 CFR 1905.11(c), that the Richmond Engineering Company, Inc., be, and is hereby authorized to use scaffolds in accordance with the following conditions, in lieu of complying with the toeboard and span requirements in § 1926.451(a) (4), (5), and (10):

(a) The applicant's loose tools and equipment shall be kept in well-designed tool containers. This does not include fitup bars, key plates, key channels, or long handled maul which may be placed on the scaffold plank during the time they are required for work. The loose tool containers shall be secured to prevent their upset or dislodgment from the scaffold area.

(b) Areas beneath and far enough away from the base of the scaffold to contain anything that falls from above shall be roped off and posted with clearly visible signs stating: "Danger Overhead Work."

(c) The space between the innermost edge of the scaffold platform and the curved plate structure of the tank shell shall not exceed 12" without protective measures. A taut wire rope supported on scaffold brackets at plank level may be used to divide any space exceeding 12" in lieu of using a guardrail or tie-off system.

(d) Not more than three employees shall be working on a 10'6" span of scaffold planking at any time.

(e) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be 10'6". These brackets shall be welded to the steel plates.

(f) Scaffold planks of rough full-dimensioned 2"×12"×12' Douglas Fir or Southern Yellow Pine of select structural grade or equivalent planking shall be used. The Douglas Fir shall have at least a 1,900 fiber stress and 1,900,000 modulus of elasticity, while the Yellow Pine shall have at least 2,500 fiber stress and 2,000,000 modulus of elasticity. Three planks with full thickness 2"×10"×12' dimensions may be used in lieu of two 2"×12"×12' planks provided that they are clamped or bonded together at the midpoint of the span, in order to spread the weight of the employees.

(g) All planking shall be secured from movement or overlapped in accordance with § 1926.451(a)(12).

(h) Guardrails shall be constructed of taut wire rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall be at least of equivalent strength, stability and height as those required for the 8 foot span of 2" x 4" wood rails by 29 CFR 1926.451(a)(5). Guardrail supports shall be located at no greater than 10'6" intervals.

Richmond Engineering Company, Inc., shall give notice of this interim order to employees affected thereby, by the same means required to be used to inform them of the application for a variance.

Effective date: This interim order shall be effective as of January 28, 1977, and shall remain in effect until a decision is rendered on the application for variance.

Signed at Washington, D.C., this 19th day of January 1977.

B. M. CONCKLIN,
Deputy Assistant Secretary of Labor.

[FR Doc.77-2826 Filed 1-27-77;8:45 am]

Pension and Welfare Benefit Programs Office

ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Cancellation of Meeting

Through Notice published on January 18, 1977 (FEDERAL REGISTER, Vol. 42, No. 12 42 FR 3364) it was announced that pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1142) the January 11, 1977 meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will reconvene at 9 a.m. on Friday, February 4, 1977, in the Federal Ballroom North, Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW, Washington, D.C.

Notice is hereby given that the above meeting is cancelled.

Signed at Washington, D.C., this 24th day of January 1977.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.77-2779 Filed 1-25-77;11:17 am]

Office of the Secretary

[TA-W-1372]

BERN INDUSTRIES, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the result of TA-W-1372: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel, alloy, copper, and brass fittings valves, couplings, flanges, etc. at the Brooklyn, New York plant of Bern Industries, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 870). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bern Industries, Inc. and United Steelworkers of America.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Brooklyn, New York plant of Bern Industries, Inc. produces only small brackets fabricated from iron and steel.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred at the plant from November 1, 1975, one year prior to the signature date of the petition, to the present.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Brooklyn, New York plant of Bern Industries, Inc. have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2836 Filed 1-27-77;8:45 am]

[TA-W-141T]

BROWN SHOE CO.

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-141T: investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On November 12, 1975, workers producing women's shoes at the Owensville, Missouri plant of the Brown Shoe Company were certified as eligible to apply for trade adjustment assistance. The Notice of Determination was published in the FEDERAL REGISTER on November 26, 1976 (40 FR 54889-54890).

The investigation regarding termination of certification was initiated on July 28, 1976 to determine whether the group of workers specified above continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the FEDERAL REGISTER (41 FR 33594) on August 10, 1976. No public hearing was requested and none was held.

During the course of the investigation, information was obtained from officials of the Brown Shoe Company, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or

subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Whenever it becomes evident that any of the above criteria are no longer met, the certification as issued must be revised to include a termination date. The termination date would apply only with respect to total or partial separations occurring after this date as specified in the revised certification.

Without regard to whether the other criteria are satisfied, the investigation reveals that the first and second criteria are no longer met with respect to workers at the Owensville, Missouri plant of the Brown Shoe Company.

Significant Total or Partial Separations. Subsequent to the November 12, 1975 finding, the average number of workers employed at the Owensville, Missouri plant of the Brown Shoe Company decreased 1 percent from 1974 to 1975. Employment increased 17 percent in the last 6 months of 1975 compared to the like period of 1974, and 22 percent in the first nine months of 1976 compared to the like period of 1975. Employment increased in the first, second, and the third quarters of 1976, 29 percent, 39 percent, and 18 percent, respectively, compared to the same quarters of 1975.

Sales or Production, or Both, Have Decreased Absolutely. Subsequent to the November 12, 1975 finding, sales of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company decreased in quantity and value, 15 percent and 10 percent, respectively, from 1974 to 1975. Sales increased in quantity and value, 21 percent and 25 percent, respectively, in the last 6 months of 1975 compared to the like period of 1974. Sales increased in quantity and value, 47 percent and 56 percent, respectively, in the first nine months of 1976 compared to the like period of 1975. Sales increased in the first, second and third quarters of 1976, 38 percent, 82 percent and 55 percent, respectively, compared to the same quarters in 1975.

Subsequent to the November 12, 1975 finding, production of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company decreased 14 percent in quantity from 1974 to 1975. Production increased 21 percent in quantity in the last 6 months of 1975 compared to the like period of 1974, and 41 percent in the first nine months of 1976 compared to the like period of 1975. Production increased in the first, second and third quarters of 1976, 44 percent, 67 percent and 39 percent, respectively, compared to the same quarters of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that total or partial separations of workers engaged in employment related to the production of women's shoes at the Owensville, Missouri plant of the Brown Shoe Company are no longer attributable to the conditions specified in section 222 of the Trade Act of 1974. In accordance with section 223(d) of the Act, I hereby revise the certification of November 12, 1975 to read as follows:

That all workers of the Owensville, Missouri plant of the Brown Shoe Company (TA-W-141) who became or will become totally or partially separated on or after October 3, 1974 and before January 31, 1977 be certified eligible to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All employees who became or will become totally or partially separated from employment after January 31, 1977 are denied certification of eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2828 Filed 1-27-77;8:45 am]

[TA-W-1154]

DANA CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1154: 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 12, 1976 in response to a worker petition received on October 12, 1976 filed by United Steelworkers of America on behalf of workers and former workers producing automobile and light truck frames, heat treated truck side rails and miscellaneous stampings and weldments at the Reading Plant, Parrish Division of Dana Corporation, Reading, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47620). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Dana Corporation and 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 Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales, or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that with respect to those workers engaged in employment related to the production of automobile and light truck frames, the second criterion has not been met and with respect to those workers engaged in employment related to the production of heat treated truck side rails, that the third and fourth criteria have not been met.

Significant Total or Partial Separations. Employment of production workers decreased 27.8 percent in 1974 compared with 1973, decreased 10.2 percent in 1975 compared with 1974 and increased 6.1 percent in the first three quarters of 1976 compared with the first three quarters of 1975. Employment of salaried workers increased 3.7 percent in 1974 compared with 1973 and increased 19.3 percent in 1975 compared with 1974.

Sales or Production, or Both, Have Decreased Absolutely. Production of heat treated truck side rails in terms of quantity decreased 13.0 percent in 1974 compared with 1973, decreased 24.0 percent in 1975 compared with 1974 and increased 20.6 percent in the first three quarters of 1976 compared with the first three quarters of 1975.

Production of automobile and light truck frames in terms of quantity increased 2.1 percent in 1975 compared with 1974 and increased 54.7 percent in the first three quarters of 1976 compared with the first three quarters of 1975.

Sales of automobile and light truck frames in terms of quantity increased 2.3 percent in 1975 compared to 1974 and increased 42.8 percent in the first three quarters of 1976 compared to the first three quarters of 1975.

Increased Imports. Imports of frames for automobiles and light trucks decreased 31.3 percent in 1974 compared with 1973, decreased 18.2 percent in 1975 compared with 1974 and increased 40.0 percent in the first half of 1976 compared with the first half of 1975. The ratio of imports to domestic production decreased from 21.7 percent in the first half of 1975 to 20.6 percent in the first half of 1976 and the ratio of imports to domestic consumption increased from 16.3 percent in the first half of 1975 to 17.8 percent in the first half of 1976. Industry sources report no imports of heat treated side rails for trucks.

Contributed Importantly. Customers purchasing heat treated truck side rails verified that they relied on the Reading Plant, Parrish Division of Dana Corporation and one other domestic manufacturer of heat treated truck side rails for these products. Purchases of heat treated truck side rails by the trucking industry have increased in 1976 compared with 1975 when the industry experienced a

decline in sales as it suffered through the general economic downturn.

Full sized automobile frames are produced by the Reading Plant, Parrish Division of Dana Corporation for one particular customer and light truck frames for another. While customers purchase some imported frames from Canada, purchases of frames from the Reading plant increased both in 1975 and in the first three quarters of 1976 reflecting increased activity within the automotive industry.

Conclusion. After careful review of the facts, it is concluded that imports of articles like or directly competitive with heat treated truck side rails produced at the Reading Plant, Parrish Division of Dana Corporation have not increased and that sales and production of automobile and light truck frames produced at the Reading Plant, Parrish Division of Dana Corporation have not declined as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2829 Filed 1-27-77;8:45 am]

[TA-W-1382]

E. W. BOHREN TRANSPORT, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1382: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 7, 1976 in response to a worker petition received on that date which was filed by the Teamsters Union on behalf of workers and former workers at E. W. Bohren Transport, Incorporated, Woodburn, Indiana who were engaged in providing transportation services to steel companies.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 876). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E. W. Bohren Transport, Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production. The term 'contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied a negative determination must be made.

E. W. Bohren Transport does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways, Incorporated (TA-W-153, 40 FR 54639). The only question in this case is whether any of the steel companies with which business is conducted i.e., firms which produce an article, namely steel, and for whom the service is provided, can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm." See Notice of Determination in Nu-Car Driveaway, Incorporated (TA-W-393, 41 FR 12749).

E. W. Bohren Transport is a transport business incorporated in the state of Indiana and licensed and regulated by the state and the Interstate Commerce Commission. E. W. Bohren competed for available business with other carriers in the Pittsburgh to Chicago area and each was free to haul for any business requesting their services.

Neither the steel companies on one hand, nor E. W. Bohren Transport on the other, is financially or otherwise involved in the business of the other. E. W. Bohren either owns or leases the facilities necessary to the operation of its business and owns or leases all its trucks and equipment.

The workers upon whose behalf this petition was filed were hired and are paid by E. W. Bohren Transport. They are supervised by and subject to the control of E. W. Bohren personnel only. All employment benefits which they enjoy are provided and maintained by E. W. Bohren Transport.

Conclusion. After careful review of the issues and facts involved, I have determined that services of the kind provided by E. W. Bohren Transport, Inc., Woodburn, Indiana are not "articles" within the meaning of section 222(3) of the Trade Act of 1974, and that none of the steel companies can be considered the "workers' firm." The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2837 Filed 1-27-77;8:45 am]

[TA-W-1346]

GENERAL SIGNAL CORPORATION, MARSH INSTRUMENTS

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-1346: investigation regarding certification of eligibility for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Skokie, Illinois plant of General Signal Corporation, Marsh Instruments Division.

The notice of investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55607). No public hearing was requested, and none was held.

The information upon which the determination was made was obtained principally from General Signal Corporation, Marsh Instruments Division and the United Steelworkers of America.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (1) has not been met.

The Skokie, Illinois plant of General Signal Corporation, Marshall Instruments Division produces only bourdon tube pressure gauges.

Evidence developed in the Department's investigation reveals that there

have been no involuntary separations from the Skokie, Illinois plant since November 1, 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Skokie, Illinois plant of General Signal Corporation, Marsh Instruments Division have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2835 Filed 1-27-77;8:45 am]

[TA-W-1169]

GTE SYLVANIA

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-1169; 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 14, 1976 in response to a worker petition received on October 14, 1976 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing color televisions at the Batavia, New York plant of GTE Sylvania.

The notice of investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48809). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of GTE Sylvania, 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 Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof and to the decrease in sales and production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation has revealed that all of the above criteria have been met for the Batavia plant.

On July 14, 1975 a certification of eligibility to apply for adjustment assistance was issued for all workers who became separated from employment related to the production of flybacks at the Batavia, New York plant of GTE Sylvania. (TA-W-25).

On November 14, 1975, a certification of eligibility to apply for adjustment assistance was issued for all workers who became separated from employment related to the production of monchrome televisions at the Batavia, New York plant of GTE Sylvania. (TA-W-151).

Significant Total or Partial Separations. The average number of production workers at the Batavia plant decreased 24 percent from 1974 to 1975 and increased 14 percent in the first ten months of 1976 compared to the first ten months of 1975.

Approximately 90 percent of production employment at Batavia was terminated in December 1976.

Sales, Production, or Both, Have Decreased Absolutely. Production of color televisions at Batavia declined 52 percent from 1974 to 1975. Production at Batavia ceased in December 1976, when several lines of production were moved to Juarez, Mexico and Smithfield, North Carolina with the exception of three component operations.

Plastic knob production, circuit board fabrication, and automation (machine placement of components into circuit boards) remained at Batavia along with the company headquarters and television warehouse. Batavia is the only Sylvania plant equipped for fabrication and automation.

Increased Imports. Imports of color televisions increased absolutely in each year from 1971 through 1973. Imports increased relative to domestic production from 1973 to 1974 and from 1974 to 1975. In the first nine months of 1976, imports increased 156 percent compared to the first nine months of 1975. The ratio of imports to domestic production increased from 24.3 percent in the first nine months of 1975 to 54.5 percent in the first nine months of 1976.

Contributed Importantly. The Department's investigation revealed that Sylvania's color television customers, who were surveyed, also purchase imported color televisions. Over 50 percent of the customers surveyed had reduced their purchases of color televisions from Sylvania, while increasing their purchases of imported color televisions. The customers agreed that imports are capturing an increasing share of the color television market because they offer a lower price and greater quality than domestically manufactured televisions.

The declines in color television production at Batavia in 1975 and 1976 compared with 1974 illustrate importantly the impact of increased import competition. In an effort to maintain price competitiveness with imports major elements of Batavia's television production were transferred to various foreign and domestic locations to reduce production costs.

Presently three component operations, employing less than 10 percent of total production employment, remain at Batavia, along with the company headquarters and warehouse.

Conclusion. After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with color televisions produced at the Batavia, New York plant of GTE Sylvania contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of color televisions at the Batavia, New York plant of GTE Sylvania who became totally or partially separated from employment on or after August 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 3, of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2830 Filed 1-27-77;8:45 am]

[TA-W-1194]

HONEYCOMB INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1194: 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 19, 1976 in response to a worker petition received on October 19, 1976 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's dresses at the Philadelphia, Pennsylvania plant of Honeycomb, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 48809) on November 5, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Honeycomb, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are

threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met. The evidence developed in the Department's investigation reveals that employment increased 9 percent in the first nine months of 1976 compared to the first nine months of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Philadelphia, Pennsylvania plant of Honeycomb, Incorporated have not become totally or partially separated as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2831 Filed 1-27-77;8:45 am]

[TA-W-1229]

LESANDE SHOE COMPANY, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1229: 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 8, 1976 in response to a worker petition received on November 8, 1976 which was filed on behalf of workers and former workers producing women's shoes at the Haverhill, Massachusetts plant of the Lesande Shoe Company, Inc.

The notice of investigation was published in the FEDERAL REGISTER on November 30, 1976, (41 FR 52563). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lesande Shoe 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 Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criterion (3) has been met, criteria (1), (2), and (4) have not been met.

Significant Total or Partial Separations. The average number of workers (both hourly production and salaried) employed at the Lesande Shoe Company, Inc. declined 3.3 percent in 1975 compared to 1974 and then increased 2.4 percent in the period January-November 1976 compared to the corresponding time period in 1975. The average number of hours worked per week by hourly production employees increased 0.4 percent in 1975 compared to 1974 and 14.8 percent in the period January-November 1976 compared to the corresponding time period in 1975.

Sales or Production, or Both, Have Decreased Absolutely. Sales of women's shoes at the Lesande Shoe Company, Inc. declined 10.3 percent in quantity in 1975 compared to 1974 and then increased 20.1 percent in the period January-November 1976 compared to the corresponding time period in 1975.

Increased Imports. Imports of women's and misses' nonrubber footwear increased absolutely and relatively in 1972 compared to 1971 and in 1973 compared to 1972. Imports declined absolutely and relatively in 1974 compared to 1973 and then increased absolutely, but declined relatively in 1975 compared to 1974. The ratios of imports to domestic production and consumption declined from 102.6 percent and 50.6 percent, respectively, in 1974 to 101.1 percent and 50.3 percent, respectively, in 1975. Imports increased absolutely but declined relatively in the first six months of 1976 compared to the first six months of 1975. The ratios of imports to domestic production and consumption declined from 107.8 percent and 51.9 percent, respectively, in the first six months of 1975 to 94.6 percent and 48.6 percent, respectively, in the first six months of 1976.

Contributed Importantly. Customers of Lesande Shoe Company, Inc. indicated that they have increased purchases from the Lesande Shoe Company, Inc. and therefore have not been switching their purchases to imported women's shoes.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with the women's shoes produced by the Lesande Shoe Company, Incorporated did not contribute importantly to the total or partial separations of the workers of such firm or subdivision.

Signed at Washington, D.C. this 19th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2833 Filed 1-27-77;8:45 am]

[TA-W-1216]

LOCKHEED-CALIFORNIA CO.

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-1216: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 2, 1976 in response to a worker petition received on November 2, 1976 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing aircraft components and subassemblies for the P-3 Orion Anti-Submarine and the L-1011 Tristar airliner at the McAlester, Oklahoma plant of the Lockheed-California Company.

The notice of investigation was published in the FEDERAL REGISTER on November 23, 1976 (41 FR 51631). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lockheed-California Company, the U.S. International Trade Commission, 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 Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion four (4) has not been met.

Lockheed Aircraft Corporation is a multi-product, multi-plant firm specializing in the manufacture of aerospace parts and products. The McAlester plant produces aircraft subassemblies, parts and products for commercial and military uses.

The Department's investigation revealed that Lockheed Aircraft Corporation was the successful bidder to supply aircraft to the Canadian government. The terms of the contract contained an offset agreement provision. This agreement required the prime contractor to assure that Canadian firms would receive subcontract work on certain airframe subassemblies, parts and products for use in the aircraft. In January 1977, as a result of this agreement, Lockheed initiated the transfer of some equipment from the McAlester plant to Canadian firms for use in subcontracting work on certain subassemblies, parts and products. All completed aircraft under the terms of this contract will be exported to Canada.

The balance of current production of airframe subassemblies, parts and products at the McAlester plant for use in commercial and military aircraft will be transferred to Lockheed's Burbank, California facility.

Several factors contributing to some of the current separations from the McAlester plant and the scheduled closing of this plant in the last quarter of 1977 include the offset agreement requiring the production of certain airframe subassemblies, parts and products by Canadian firms, the decline in new aircraft orders, and the transfer of production from one domestic facility to another domestic facility. This transfer of production will lead to increased production and employment at the Burbank, California plant.

Company officials indicated that the imports of airframe subassemblies from Canada to the United States are expected to begin about June or July 1977. As of this date no subassemblies have been imported, and, until such importation takes place, there is no basis for certification.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with subassemblies, parts and products for commercial and military aircraft produced at the McAlester, Oklahoma plant of the Lockheed-California Company did not contribute importantly to the total or partial separation of workers of that plant as required under Section 222 of the Trade Act of 1974. Therefore eligibility to apply for adjustment assistance is denied.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2832 Filed 1-27-77;8:45 am]

[TA-W-1270]

SPORTABLES, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1270: 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 24, 1976 in response to a worker petition received on November 24, 1976 which was filed by the International Ladies Garment Workers' Union on behalf of workers and former workers producing women's suits at the Philadelphia, Pennsylvania plant of Sportables, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 53553) on December 7, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sportables, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat, thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met. The evidence developed in the Department's investigation reveals that average employment increased 9 percent in the first nine months of 1976 compared to the first nine months of 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that employees at the Philadelphia, Pennsylvania plant of Sportables, Incorporated have not become totally or partially separated as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of January 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-2834 Filed 1-27-77;8:45 am]

[TA-W-1,545]

WESTERN LEATHER PRODUCTS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 13, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Western Leather Products Corporation, Milwaukee, Wisconsin (TA-W-1,545). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with heels, counters and welting for shoes and leather for waist belts produced by Western Leather Products Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2838 Filed 1-27-77;8:45 am]

Office of the Secretary

[TA-W-1,574]

AMBOY MANUFACTURING CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 17, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Amboy Manufacturing Company, Perth Amboy, New Jersey (TA-W-1,574). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with children's coats produced by Amboy Manufacturing Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2862 Filed 1-27-77;8:45 am]

[TA-W-1,581]

A & T LADIES' GARMENT CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated January 7, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of A & T Ladies' Garment Corporation, Brooklyn, New York (TA-W-1,581). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' coats and suits produced by A & T Ladies' Garment Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject mater of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2869 Filed 1-27-77;8:45 am]

[TA-W-1,566]

ATWATER THROWING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 27, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Textile Workers of America on behalf of the workers and former workers of Wilkes Barre, Pennsylvania plants of Atwater Throwing Co., Inc., Plymouth, Pa. a Division of Burlington Industries, Greensboro, N.C. (TA-W-1,556). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with textured yarn and throwing yarn produced by Atwater Throwing Company, Inc. 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2854 Filed 1-27-77;8:45 am]

[TA-W-1,567]

ATWATER THROWING COMPANY, INC.

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 27, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Textile Workers of America on behalf of the workers and former workers of Atwater Throwing Company, Inc., Plymouth, Pennsylvania, a Division of Burlington Industries, Greensboro, N.C. (TA-W-1,567). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with textured yarn and throwing yarn produced by Atwater Throwing Company, Inc. 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. The investigation 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. A group meeting the eligibility requirements of section 22 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2855 Filed 1-27-77;8:45 am]

[TA-W-1,547]

BALI COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies Garment Workers Union on behalf of the workers and former workers of the Jersey City, New Jersey plant of The Bali Company, Inc., Winston-Salem, New Jersey, a wholly owned subsidiary of Hanes Corporation, Winston-Salem, N.C. (TA-W-1,547). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and allied products produced by The Bali Company, Inc. 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2840 Filed 1-27-77;8:45 am]

[TA-W-1,546]

BELLEVILLE SHOE MANUFACTURING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Belleville Shoe Manufacturing Company, Belleville, Illinois (TA-W-1,546). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with combat boots & athletic shoes produced by Belleville Shoe Manufacturing Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2839 Filed 1-27-77;8:45 am]

[TA-W-1,568]

CAPITOL FOOTWEAR CORP.

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Capitol Footwear Corporation, Worcester, Massachusetts (TA-W-1,568). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's casual shoes, slippers & sandals produced by Capitol Footwear Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2856 Filed 1-27-77;8:15 am]

[TA-W-1,548]

CURLEE CLOTHING COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 4, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Curlee Clothing Company, Inc., Mayfield, Kentucky (TA-W-1,548). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits, vests, sportcoats & slacks produced by Curlee Clothing Company, Incorporated 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written coments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2841 Filed 1-27-77;8:45 am]

[TA-W-1,553]

DILAVORE SPORTSWEAR CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of DiLavore Sportswear Corp., Elmont, New York (TA-W-1,553). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's pants, jackets, skirts, blouses & dresses produced by DiLavore Sportswear Corporation 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. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2846 Filed 1-27-77;8:45 am]

[TA-W-1,556]

DUCHESS GARTER CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 1, 1977, the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Duchess Garter Corporation, New York, New York (TA-W-1,556). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with garters and shoulder straps produced by Duchess Garter Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2849 Filed 1-27-77;8:45 am]

[TA-W-1,576]

DURALOY-BLAW-KNOX, INC.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977, the Department of Labor received a petition dated December 17, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Duraloy-Blaw-Knox, Inc., Scottdale, Pennsylvania, a division of White Consolidated Industries, Cleveland, Ohio (TA-W-1,576). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increase of imports of articles like or directly competitive with tubing carbon steel, stainless steel, alloy and alloy metals produced by Duraloy-Blaw-Knox, Inc. 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. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjust Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2864 Filed 1-27-77;8:45 am]

[TA-W-1,554]

EMPIRE OLDSMOBILE

Investigation Regarding Certification of Eligibility To apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 13, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Empire Oldsmobile, New York, New York, a Division of General Motors, Rochester, N.Y. (T-W-1,554). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the selling of automobiles provided by Empire Oldsmobile 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90-13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2847 Filed 1-27-77;8:45 am]

[TA-W-1,555]

GETTYSBURG GARMENT CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 6, 1977 the Department of Labor received a petition dated December 22, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Gettysburg Garment Company, Gettysburg, Pennsylvania, a Division of Cardinal Cottons Corp., New York, New York (TA-W-1,555). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' robes and loungewear produced by Gettysburg Garment Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 6th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2848 Filed 1-27-77;8:45 am]

[TA-W-1,551]

HANSEN SEAWAY SERVICE LTD.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 2, 1977 the Department of Labor received a petition dated December 2, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Longshoremen's Association on behalf of the workers and former workers of Hansen Seaway Service Ltd., Milwaukee, Wisconsin (TA-W-1,551). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the storing of import and export products provided by Hansen Seaway Service Ltd. 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 2nd day of January 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2844 Filed 1-27-77;8:45 am]

[TA-W-1,552]

INTERNATIONAL HARVESTER CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 5, 1977 the Department of Labor received a petition dated December 14, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the New Orleans, La. plant of International Harvester Company, Chicago, Ill. (TA-W-1,552). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with industrial twine produced by International Harvester Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2845 Filed 1-27-77;8:45 am]

[TA-W-1,549]

K-P HYDRAULICS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 2, 1976 the Department of Labor received a petition dated December 2, 1976 which was filed under section 221 (a) of the Trade Act of 1974 ("the Act") by the Electrical Radio and Machine Workers of America on behalf of the workers and former workers of K-P Hydraulics Company, Hudson, Wisconsin (TA-W-1,549). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hydraulic jacks produced by K-P Hydraulics Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or prodution, 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 2nd day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2842 Filed 1-27-77;8:45 am]

[TA-W-1,573]

L.B. EVANS' SON CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221 (a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of L. B. Evans' Son Company, Wakefield, Massachusetts (TA-W-1,573). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's slippers and shoes produced by L. B. Evans' Son Company 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. The investigation will further relate, as appropiate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2861 Filed 1-27-77;8:45 am]

[TA-W-1,559]

LEEMAR KNITTING MILLS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 19, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Leemar Knitting Mills, Long Island City, New York (TA-W-1,559). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's pants, dresses, blouses and jackets produced by Leemar Knitting Mills 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2850 Filed 1-27-77;8:45 am]

[TA-W-1,580]

LINETT TAILEURS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of Linett Tailleurs Company, New York, New York, a subsidiary of Linett Clothes, Inc., New York, New York (TA-W-1,580). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits and sports jackets produced by Linett Tailleurs Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 Constition Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2868 Filed 1-27-77;8:45 am]

[TA-W-1,575]

MARIA GARMENT CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 17, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Maria Garment Company, Jersey City, New Jersey (TA-W-1,575). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' dresses, pants and blouses produced by Maria Garment Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 17th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2863 Filed 1-27-77;8:45 am]

[TA-W-1,565]

MIRED FOUNDATIONS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 1, 1977, the Department of Labor received a petition dated December 1, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Ladies' Garment Workers Union on behalf of the workers and former workers of Mired Foundations, Inc., New York, New York (TA-W-1,565). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brassieres and girdles produced by Mired Foundations, Incorporated 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. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2853 Filed 1-27-77;8:45 am]

[TA-W-1,578]

NATIONAL SUPPLY CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 9, 1977, the Department of Labor received a petition dated December 9, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Gainesville, Texas plant of National Supply Co., Houston, Texas, a Div. of Armco Steel Corp., Middletown, Ohio (TA-W-1,578). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel triplex pumps, slush pumps, converters and cranes produced by National Supply Company 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 separatiton of a significant number or proportion of the workers of such firm or subdivision. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistant under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 9th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2866 Filed 1-27-77;8:45 am]

[TA-W-1,550]

ROBERT HALL CLOTHES

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 5, 1977, the Department of Labor received a petition dated December 5, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Robert Hall Clothes, New York City, New York (TA-W-1,550). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's tailored suits, sportcoats, leisure suits and slacks produced by Robert Hall Clothes 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 of proportion of the workers of such firm or subdivision. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 5th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2843 Filed 1-27-77;8:45 am]

[TA-W-1,571]

ROCKWELL INTERNATIONAL

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 6, 1976, the Department of Labor received a petition dated November 29, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America on behalf of the workers and former workers of Harvard, Illinois, Admiral Group of Rockwell International, Pittsburgh, Pa. (TA-W-1,571). Acordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with color televisions produced by Rockwell International 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 4th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2859 Filed 1-27-77;8:45 am]

[TA-W-1,583]

SHENANGO, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977, the Department of Labor received a petition dated December 27, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the Buffalo, New York plant of Shenango, Inc., Pittsburgh, Pa., a wholly-owned subsidiary of Shenango Furnance Company, Pittsburgh, Pa. (TA-W-1,583). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with cast iron molds produced by Shenango, Incorporated 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2871 Filed 1-27-77;8:45 am]

[TA-W-1,569]

SOUTH END TRANSPORTATION, INC.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 11, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the on behalf of the workers and former workers of South End Transportation, Inc., Trout Creek, Michigan (TA-W-1,569). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with transporting of workers to the White Pine Copper Mine provided by South End Transportation, Inc. 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 11th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2857 Filed 1-27-77;8:45 am]

[TA-W-1,582]

UNION CARBIDE CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 20, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Oil, Chemical and Atomic International Union on behalf of the workers and former workers of the Marietta, Ohio, Metals Division plant of Union Carbide Corporation, New York, New York (TA-W-1,582). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ferro chrome, ferro manganese, silicon manganese and electrolytic manganese produced by Union Carbide Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2870 Filed 1-27-77;8:45 am]

[TA-W-1,577]

UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 7, 1977 the Department of Labor received a petition dated December 7, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of the workers and former workers of United Automobile, Aerospace & Agricultural Implement Workers of America, Kenosha, Wis. (TA-W-1,577). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with secretarial services provided by United Automobile, Aerospace & Agricultural Implement Workers of America 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 7th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 77-2865 Filed 1-27-77;8:45 am]

[TA-W-1,563]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United States Steelworkers of America on behalf of the workers and former workers of Lorain, Ohio plant of United States Steel Corporation, Pittsburgh, Pa. (TA-W-1,563). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with furnace for pig iron produced by United States Steel Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2851 Filed 1-27-77;8:45 am]

[TA-W-1,564]

U.S. STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 23, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Irvin ET Works, Braddock and Dravosburg, Pennsylvania of U.S. Steel Corp., Pittsburgh, Pa. (TA-W-1,564). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon sheet and strip, coded sheet, slabs and tin mill products produced by U.S. Steel Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a subtantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2852 Filed 1-27-77;8:45 am]

[TA-W-1,570]

WEYENBERG SHOE MANUFACTURING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 10, 1977 the Department of Labor received a petition dated December 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of Weyenberg Shoe Manufacturing Co., Milwaukee, Wisconsin (TA-W-1,570). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with insoles and outsoles for men's shoes produced by Weyenberg Shoe Manufacturing Co. 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2858 Filed 1-27-77;8:45 am]

[TA-W-1,572]

WHEELING-PITTSBURGH STEEL CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On January 1, 1977 the Department of Labor received a petition dated December 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Martins Ferry, Ohio plant of Wheeling-Pittsburgh Steel Corp. Pittsburgh, Pa. (TA-W-1,572). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with galvanized sheets, coils & metal ware products produced by Wheeling-Pittsburgh Steel Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 9, 1977.

The petition filed in this case is 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 1st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2860 Filed 1-27-77;8:45 am]

[TA-W-1,579]

WILLIAM ATKIN COMPANY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 18, 1977 the Department of Labor received a petition dated December 30, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of William Atkin Company, Incorporated, Allentown, Pennsylvania (TA-W-1,579). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's shirts produced by William Atkin Company, Incorporated 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 February 9, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not latter than February 9, 1977.

The petition filed in this case is 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 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-2867 Filed 1-27-77;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

MEETINGS

The National Commission on Electronic Fund Transfers will meet on Wednesday, February 9, 1977 and Thursday, February 10, 1977 at the Motor House Complex, Colonial Williamsburg, Williamsburg, Virginia, beginning at 9 a.m. each day. The meetings will discuss the contents of the Commission's interim report to the President and the Congress.

The meetings are open to the public on a first-call basis to the extent that space permits. Any person interested in attending should first call Ms. Janet Miller at (202) 254-7400 to check on the availability of space.

Dated: January 24, 1977.

JAMES O. HOWARD, Jr.,
General Counsel.

[FR Doc.77-2790 Filed 1-27-77; 8:45 am]

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 January 19, 1977 (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; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

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 DEFENSE

Department of the Navy, U.S. Navy paid broadcast media mix and media weight, attitude and awareness study, single time, nonprior service males age 17-21, National Security Division, Maria Gonzalez, 395-4734.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development Research, single-family default counseling referral, screening, and status record, 8118A, 8118B, single time, counseling agencies for Sec. 203, 221, 235 mortgagors, Larry Haber, 395-5631.

Office of Human Development, Survey of Headstart Assessment Instruments and Survey of Headstart Assessment Procedures, single time, Headstart directors and teachers, Raynsford, R., 395-3814.

Housing management:

Development cost budget for public housing program, HUD-52484, on occasion, public housing agency, Housing, Veterans and Labor Division, 395-3532.

Application by public agency for public housing program, HUD-52470, on occasion, public housing agencies, Housing Veterans and Labor Division, 395-3532.

Preliminary site report by public housing agency HUD-52651, on occasion, public housing agencies, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration, retail level drug sample, monthly, State & local crime laboratories in 25 cities, Tracey Cole, 395-5870.

DEPARTMENT OF LABOR

Labor Management and Service Administration, survey to assess the impact of ERISA on administration Costs of small pension plans, single time, employers who sponsored pension plans having 19 participants, Strasser, A., 395-5867.

EXTENSIONS

GENERAL SERVICES ADMINISTRATION

Bidders mailing list application, SF129, on occasion, applicants, Caywood, D. P., 395-3443.

NATIONAL SCIENCE FOUNDATION

Survey of earned doctorates awarded in the United States, annually, all new Ph. D.'s, Kathy Wallman, 395-6140.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

New Technology Transmittal form, NASA 666, on occasion, NASA Contractors, Warren Topelius, 395-5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2932 Filed 1-27-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice 514]

US-UK AIR SERVICES AGREEMENT (THE BERMUDA AGREEMENT)

Current Renegotiation

On June 22, 1976, the United Kingdom notified the United States of its intention to terminate one year hence the United States-United Kingdom Air Services Agreement, commonly referred to as the Bermuda Agreement.[1] The United Kingdom requested consultations under the terms of Article 13 of the Bermuda Agreement.

The Department of State is responsible for the negotiation of international agreements, including air transport agreements. Under Section 802 of the Federal Aviation Act, the Secretary of State is required to "consult with the Secretary of Transportation, (the Civil Aeronautics) Board, or Secretary (of Commerce), as appropriate, concerning the negotiations of any agreements with foreign governments for the establishment or development of * * * air routes and services." The Department of State is coordinating with other agencies regarding United States positions for negotiations with the United Kingdom looking to a new United States-United Kingdom air transport agreement. Consultations between the two countries aimed at developing a new bilateral agreement have begun and will continue during 1977.

Traffic rights between the United States and the United Kingdom were exchanged in 1946 when the Governments of the two nations entered into the Bermuda Agreement. This document has become a model not only for numerous subsequent agreements between the United States and other countries but also for bilateral agreements between other countries. As amended, the provisions of the Bermuda Agreement have continued to serve as the foundation for commercial air services between the United States and the United Kingdom.

Any new agreement which may ultimately be concluded could have significant effects both on the United States aviation industry and on shippers and travelers involved in trade and transport between the United States and the United Kingdom and its territories. Furthermore, the fact that many other bilateral air transport agreements have adopted the Bermuda Agreement as a model suggests that a new agreement could have significance beyond its effect on US-UK air transport relationships.

The Department of State, the Civil Aeronautics Board, and on occasion other interested federal agencies have in the past solicited the views of interested parties prior to the commencement of significant aviation negotiations. Because renegotiation of the Bermuda Agreement portends significant consequences for United States relations with many aviation partners, the Department of State has decided more formally to

[1] Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Relating to Air Services Between Their Respective Territories, February 11, 1946, 60 Stat. 1499, TIAS 1507, 3 UNTS 253. Amended May 27, 1960, 17 UST 683, TIAS 6019, 573 UNTS 274.

invite the submission of written views and data from interested members of the United States public relating to the renegotiation. This general solicitation of views does not constitute a proceeding governed by the Administrative Procedures Act, as agency actions involving foreign affairs functions of the United States are specifically exempted from the requirements of the Act by 5 U.S.C. 553(a)(1). Although the Department welcomes any relevant submission or presentation, the public is particularly invited to address the following issues raised by the United Kingdom or of interest to the United States Government.

1. *Capacity.* Under the Bermuda Agreement, it is anticipated that the amount of capacity to be provided on a route will be decided by each carrier individually, subject to review by governments after a reasonable period of experience to determine whether the capacity operated has been consistent with certain specified principles relating to market demand, undue effect on the carriers of the other country, and to the origin and destination "freedom" composition) of traffic. The United Kingdom proposes that some form of capacity control be introduced which would require agreement on capacity levels either among the carriers or between the governments.

2. *Routes.* Under the Bermuda Agreement, the United States has rights for its carriers to operate an extensive route system between the United States and the United Kingdom and beyond, between the United States and Bermuda and British possesions in the Caribbean, and between the United States and Hong Kong and beyond. The United Kingdom also has extensive route rights to and from the United States, some of which are not currently being exercised. The United Kingdom has proposed that all transatlantic routes be turnaround routes (i.e., no operations by United States carriers beyond United Kingdom points), that the United States rights to operate beyond Hong Kong be terminated, and that, to the extent the United Kingdom may not request reciprocal routes involving Bermuda, the Caribbean, and Hong Kong, it be accorded additional routes in other market areas.

3. *Designation of Carriers.* Under the Bermuda Agreement, each government has the right to designate one or more carriers to operate over each route. The United Kingdom has proposed that no more than one combination carrier of each country be allowed to operate on any city-pair route in transatlantic markets and that only one carrier of each country be allowed to operate all-cargo services.

4. *Fares.* Under the Bermuda Agreement, proposed air fares must be filed with the aeronautical authorities and are subject to disapproval if, after notice and consultations, the two governments are not able to agree on the appropriate air fare. The British have expressed dissatisfaction over how this system works, but have not proposed a specific alternative. Among the relevant issues are:

(a) What role, if any, should governments play in establishing air fares or in providing guidance or criteria to the carriers?

(b) What role should governments play when either IATA cannot agree or an IATA resolution is disapproved by one or more governments?

(c) What revisions should be made in the rate article in the Bermuda Agreement?

(d) If some form of capacity control were to be agreed, should there be greater price competition and, if so, how can the latter be achieved?

(e) Should commission rates be subject to the same provisions in a new agreement as air fares?

5. *Charter Services.* The Bermuda Agreement governs only scheduled air services. Charter air services are not subject to an overall United States-United Kingdom agreement, although there was in effect until December 31, 1976, a bilateral understanding addressed mostly to the charterworthiness issue (Understanding Relating to Passenger Charter Air Services (TIAS 8303)). Among the relevant issues are:

(a) Should any new air transport agreement with the United Kingdom cover both scheduled and charter air services? Or, alternatively, should there be separate, but otherwise coequal, agreements on scheduled and charter air services?

(b) If charter air services are to be governed by a full agreement, how should it address such questions as charter traffic rights, number of carriers that may be designated, capacity, price (charter air fares), and the relationship of scheduled and charter air services?

6. *User Charges.* The Bermuda Agreement does not address user charges, except to confirm the general language in Article 15 of the Convention on International Civil Aviation (61 Stat. 1180, TIAS 1591, 15 UNTS 295). Among the issues is whether any new agreement should establish user charge standards and, if so, what these standards should be.

Any member of the United States public desiring to submit views and data relating to the foregoing should address his submission in writing to the Director, Office of Aviation, Department of State, Washington, D.C. 20520. Material should be captioned "Bermuda Renegotiation" and should be supplied in original and 15 copies. In order to be of maximum usefulness, material should be received as soon as feasible.

Unless valid legal cause is demonstrated, all submissions will become part of a public record to be maintained by the Office of Aviation, Department of State. Any party who believes that all or any part of the material he is submitting may be withheld from public disclosure under the Freedom of Information Act, either because it contains commercially competitive information or for any other reason, should identify such material in his submission.

The Department will give thorough consideration to each of the submissions it receives. It may contact parties who submit material in response to this notice or other interested parties to seek clarification or elaboration of the views and data they have conveyed, or to seek views and data on other issues of a subsidiary nature which may be posed by the negotiation, particularly as the negotiations progress to the consideration of specific matters. As United States negotiating positions are formulated and developed, the Department's policy in favor of public disclosure of comments submitted on the Bermuda renegotiation will inevitably conflict with the need to maintain a degree of confidentiality in order not to reveal our negotiating posture piecemeal or prematurely. The Department will attempt to include in its public record the above responses to requests for clarification or elaboration to the greatest extent consistent with this requirement of confidentiality of negotiating positions.

Dated: January 19, 1977.

JULIUS L. KATZ,
Assistant Secretary for Economic and Business Affairs.

[FR Doc.77-2805 Filed 1-27-77;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

COMMERCIAL STANDARD

Intent To Withdraw

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as revised; 35 FR 8349 dated May 28, 1970), notice is hereby given of the intent to withdraw Commercial Standard CS 132–46, "Hardware Cloth." It has been tentatively determined that this standard is technically inadequate and that revision would serve no useful purpose. The subject matter of CS 132–46 is adequately covered by American Society for Testing and Materials ANSI/ASTM A 740–76, "Standard Specification for Hardware Cloth (Woven or Welded Galvanized Steel Wire Fabric)."

Any comments or objections concerning this intended withdrawal of this standard should be made in writing to the Standards Development Services Section, National Bureau of Standards, Washington, D.C. 20234, on or before February 28, 1977. The effective date of withdrawal will be not less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal.

Dated: January 21, 1977.

ERNEST AMBLER,
Acting Director.

[FR Doc.77–2751 Filed 1–27–77;8:45 am]

National Oceanic and Atmospheric Administration

NALCO ENVIRONMENTAL SCIENCES

Receipt of Application for Endangered Species Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take an endangered species of fish for scientific purposes as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife Permit (50 CFR Parts 217–222).

Nalco Environmental Sciences, 6720 Thompson Road, Syracuse, New York 13211, to take for research purposes, an endangered species of fish, the shortnose sturgeon (*Acipenser brevirostrum*) in the Hudson River in the State of New York during the next 5 years.

The Applicant will in the course of assessing the status of fish populations and the impact of power generation facilities on these populations, occasionally take shortnose sturgeon by such means as gill netting or trawling. Live specimens so captured will be measured, weighed and returned immediately to the Hudson River. Any specimen found dead upon the retrieval of the collecting gear will be preserved after being weighed and measured. Such specimens will be deposited in scientific collections.

The data collected from these occasionally captured specimens will be provided to other researchers who are conducting more extensive work on shortnose sturgeon.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C.; and
Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Written data or views, or requests for a public hearing on this application, should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 28, 1977. The holding of such a hearing is at the discretion of the Director. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate.

Any statements and opinions that may be contained in this notice in support of this application are summarized from information supplied by the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: January 21, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77–2759 Filed 1–27–77;8:45 am]

NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL AND MID-ATLANTIC REGIONAL FISHERY MANAGEMENT COUNCIL

Fishery Conservation and Management Draft Fishery Management Plan Concerning Atlantic Cod, Haddock, and Yellowtail Flounder; Receipt of Public Comment

Notice of a series of public meetings for the purpose of receiving public views and comments concerning the enclosed Draft Fishery Management Plan for Atlantic Cod, Haddock, and Yellowtail Flounder pursuant to section 302(h) of the Fishery Conservation and Management Act of 1976, Pub. L. 94–265 has already been made by publication in the FEDERAL REGISTER. The purpose of this publication is to ensure that the public has the greatest possible opportunity to review the contents of the draft fishery management plan which was prepared by the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council.

Persons desiring to comment or submit their views may do so by directing their comments to either:

JOHN C. BRYSON, Executive Director, Mid-Atlantic Regional Fishery Management Council, c/o Senator Roth's Office, Federal Building, North New Street, Dover, Delaware 19901.
Patricia Pelczarski, New England Regional Fishery Management Council, c/o National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

Written comments on the draft plan may be submitted by interested members of the public no later than February 23, 1977 to either of the addresses above.

This notice was prepared and published at the request of the New England Regional Fishery Management Council in consultation with the Mid-Atlantic Regional Fishery Management Council.

Dated at Washington, D.C. this 24th day of January, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

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I. Introduction. The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) provides for the conservation and management of fishery resources of the United States by establishing a fishery conservation zone of 200 nautical miles, within which the United States has exclusive management authority over all fishery resources except highly migratory species. The Act calls for the preparation and implementation of fishery management plans to meet the objectives of a National Fishery Management Program.

This fishery management plan, prepared under authority of the Fishery Conservation and Management Act of 1976 (FCMA), addresses only haddock, cod, and yellowtail flounder. Other demersal species will be evaluated in the future.

Harvesting of haddock, cod, and yellowtail flounder off the Northeastern United States was, until December 31, 1976, regulated under terms of the International Commission for the Northwest Atlantic Fisheries (ICNAF), and subsequent agreements between the 18 signatory nations. The FCMA, enacted and signed into law on April 13, 1976, is effective March 1, 1977. Management of seriously depleted New England stocks, such as are addressed in this plan, is not provided for in the interim. Management plans for offshore New England waters are to be formulated by the New England Regional Fisheries Management Council, one of eight such Councils provided for by the FCMA.

The management plan proposes management measures for the groundfish fisheries for haddock, cod, and yellowtail flounder to achieve historic levels of maximum sustainable yield. Since the stocks in question have substantially declined as a result of overfishing and other factors, quotas, areas, mesh size restrictions, and minimum size regulations are recommended for implementation.

II. The Fishery Management Plan.

1. Description of the fishery.

II. 1.a. Cod.

II.1.a(1) Areas and Stocks Involved.

Wise (1958, 1962) proposed three or possibly four separate groups of cod in the waters off the eastern U.S. coast. The areas inhabited by these groups were defined as 1) Georges Bank, east of the 68th meridian; 2) Gulf of Maine, north of Provincetown, Massachusetts; 3) southern New England, south and west of Nantucket Sholas, and 4) a New Jersey coastal group which spends part of the year mingled with a group in the southern New England area. For management purposes the cod stocks have been grouped as Gulf of Maine ICNAF 5Y and Georges Bank and southward ICNAF 5Z and 6 (See Fig. 1). Historically, the majority of the commercial landings have come from Georges Bank.

Similar groupings can be identified in the waters immediately adjacent to the north of Georges Bank but the degree of intermixing appears to be minimal.

II.1.a(2) Statistical History of Exploitation.

Cod have been exploited off the eastern U.S. seaboard since the seventeenth century. They have been fished both commercially and for recreation throughout their range.

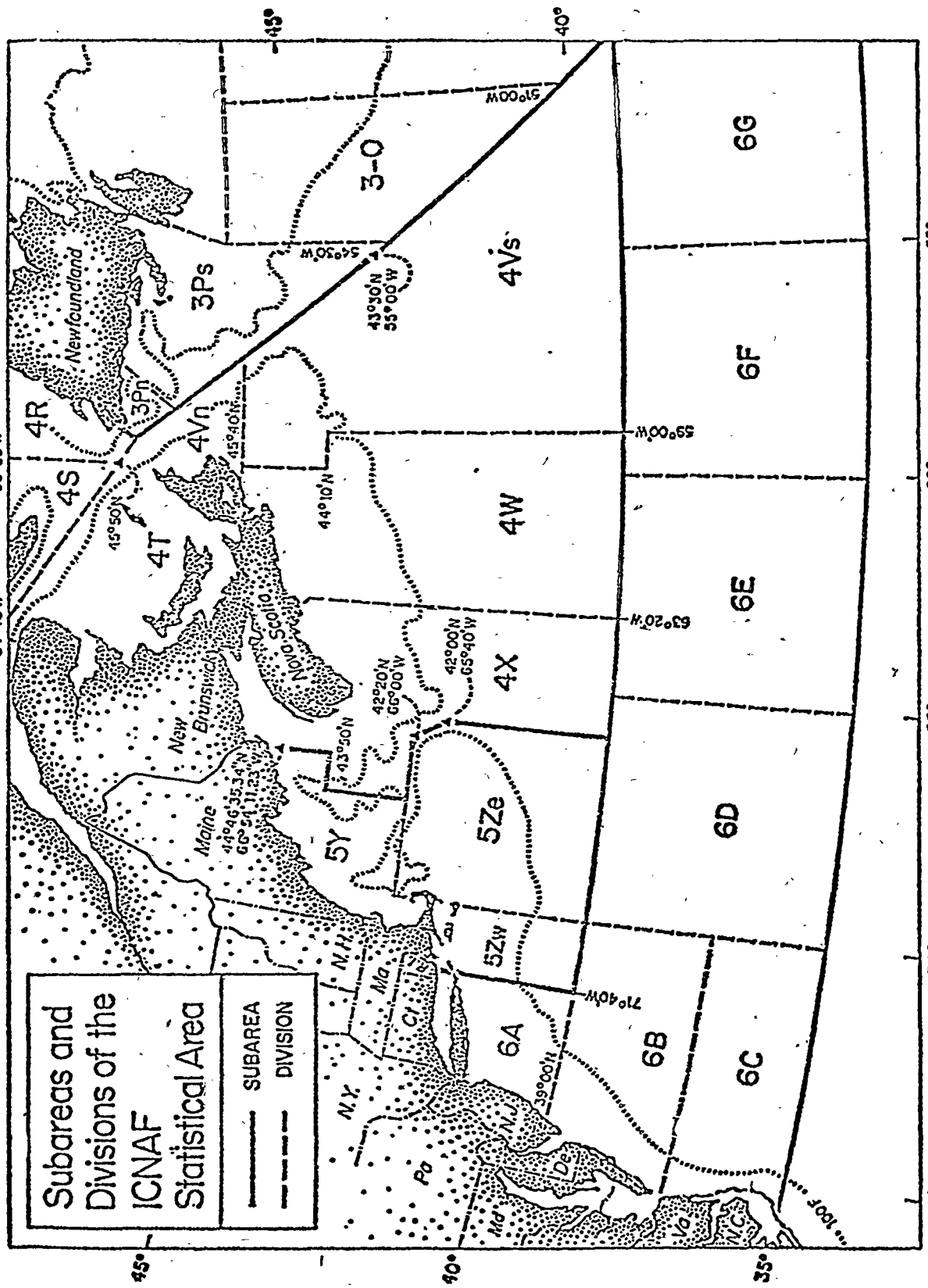


Figure 1. Northwest Atlantic from Cape Hatteras to Newfoundland, showing ICNAF Areas referred to in the Management Plan.

In the Middle Atlantic-New York Bight area the commercial fishery has been seasonal, with peak catches taken from December through February. The fishery at one time extended as far south as the Chesapeake Bay region, with pound nets, longlines, and trawls being used, but catches were never large in comparison with the more northerly stocks; i.e., in the New York Bight area, peak catches in 1930 approached 5,000 metric tons (m.t.) and the Chesapeake Bay region yielded a maximum catch of only 450 m.t. (1962). In contrast, cod landings from New England waters have exceeded 50,000 m.t. several times since 1900. The shift in fishing practices for the southern cod stock has resulted in the current harvest of cod mainly as an incidental catch associated with other groundfish fisheries. Commercial landings from the New York Bight area in 1970 approximated only 260 m.t. However, with the increasing trend in the number of salt water anglers and the growing popularity of winter sportfishing, the cod has taken on a new importance, particularly in the New York area.

Marine recreational surveys conducted in 1960, 1965, 1970, and 1974 estimated the recreational catches of cod to be 6,349, 13,560, 16,281, and 12,381 m.t. respectively. The U.S. commercial landings of cod in 1970 for this same area, New York to Maine were only 24,000 m.t. with the greatest share of the catch coming from offshore waters not generally fished by the recreational fishermen.

Landings statistics for the major offshore commercial fisheries for cod are available since 1893. Up until 1960, the stocks were exploited almost exclusively by U.S. fishing vessels, but following 1960, exploitation by foreign nations increased the total landings of cod threefold. This fishery may be separated into three periods: The early period from 1893–1910 in which years of record high landings in 1895 and 1907 were followed by much reduced catches; the middle period from 1910–1950 during which landings remained fairly steady; and the latest period from 1950–1975 when landings first rose to near record high levels and then returned to the long-term average levels (Fig. 2, Table 11). The mean annual catch for the total fishery since 1893 is 32,000 m.t. Approximately 80 percent of the catch comes from Georges Bank.

Nominal catches for the Gulf of Maine have fluctuated between 2,700 and 14,500 m.t. since 1932 and have averaged 7,100 m.t. over the past 10 years (1966–1975); almost all of this catch has been taken by the U.S. In 1975, the provisional catch approximated 9,400 m.t. In addition, this stock has supported undetermined, but apparently increasing, levels of recreational fishing for some time.

During the period 1932–1960, nominal U.S. commercial catches for the Georges Bank stock complex fluctuated between 8,100 and 32,300 m.t. With increased Canadian fishing and the advent of distant water fleets, landings rose very sharply to 52,900 tons in 1966. Landings declined sharply thereafter and then stabilized around 26,000 m.t. annually during 1970–75. In 1975, nominal catch approximated 24,000 m.t.

Table 11. Historical cod landings (MT x 10^{-3}) in the US Zone

	Gulf of Maine (5Y)		Georges Bank & Southward (5Z)
	US	Others	US
1932	5.9		25.1
1933	7.0		25.2
1934	11.6		16.0
1935	9.7		21.2
1936	7.4		23.3
1937	7.4		32.3
1938	7.5		24.9
1939	5.5		22.0
1940	5.8		18.4
1941	6.1		25.5
1942	6.7		18.3
1943	9.4		17.3
1944	10.5		17.6
1945	14.5		14.3
1946	9.2		20.9
1947	7.9		16.6
1948	7.5		17.6
1949	7.2		17.7
1950	5.1		15.4
1951	3.6		14.8
1952	3.0		10.9
1953	3.1		8.1
1954	3.4		8.8
1955	3.2		9.3
1956	2.7	*	10.5
1957	2.6	*	10.4
1958	4.7	*	11.1
1959	3.8	0.1	12.1

*Less than 100 metric tons.

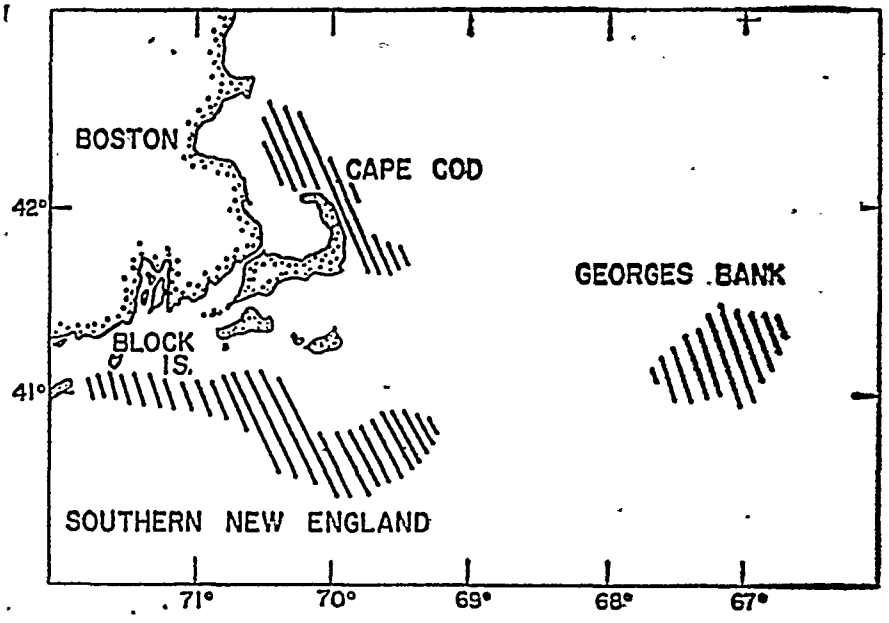


Figure 3. Yellowtail Flounder Fishing Grounds.

Table 11 – (continued)

Year		US		Canada		Spain		USSR		Poland		Other		Total	
		5Y	5Z	5Y	5Z	5Y	5Z	5Y	5Z	5Y	5Z	5Y	5Z	5Y	5Z
1960		3.4	10.8	0.1	-	-	-	-	-	-	-	-	-	3.6	10.4
1961		3.2	14.0	-	0.2	-	-	-	-	-	-	-	-	3.2	14.3
1962		3.0	15.2	-	2.4	-	-	-	5.3	-	0.1	-	-	3.1	23.1
1963		2.6	13.9	-	7.8	-	-	0.1	5.2	-	-	-	-	2.7	27.0
1964		3.2	12.3	-	7.1	-	-	-	5.4	-	-	-	0.2	3.3	25.2
1965		3.8	11.4	0.1	10.6	-	-	-	14.4	-	1.9	-	-	3.9	38.3
1966		4.0	11.8	0.4	15.6	-	8.4	-	16.8	-	0.3	-	0.1	4.4	52.9
1967		5.7	12.7	0.3	8.2	-	14.7	-	0.5	-	-	-	-	6.0	36.3
1968		6.4	14.9	0.1	9.1	-	14.6	-	1.5	-	2.6	-	-	6.4	42.8
	(5Ze)		(13.5)		(9.1)		(14.5)		(1.4)		(2.3)		(-)		(40.9)
	(5Zw)		(1.4)		(-)		(0.1)		(0.1)		(0.3)		(-)		(1.9)
1969		8.2	16.4	0.1	6.0	0.2	13.6	-	0.7	-	0.7	-	0.1	8.5	37.3
	(5Ze)		(15.0)		(6.0)		(13.6)		(0.3)		(0.4)		(0.1)		(35.3)
	(5Zw)		(1.4)		(-)		(-)		(0.4)		(0.3)		(-)		(2.0)
1970		7.8	14.6	-	2.6	0.4	6.8	-	0.3	-	0.7	-	0.1	8.2	25.1
	(5Ze)		(13.4)		(2.6)		(6.8)		(0.2)		(0.6)		(0.1)		(23.7)
	(5Zw)		(1.2)		(-)		(-)		(0.1)		(0.1)		(-)		(1.4)
1971		7.4	15.8	0.1	3.0	0.2	7.5	-	1.2	-	0.1	-	-	7.7	27.9
	(5Ze)		(15.0)		(3.0)		(6.4)		(1.1)		(0.1)		(-)		(26.0)
	(5Zw)		(0.8)		(-)		(1.1)		(0.1)		(-)		(-)		(1.9)
1972		6.8	13.2	0.1	2.5	-	6.7	-	1.9	-	0.2	0.1	0.2	6.9	24.6
	(5Ze)		(12.5)		(2.5)		(5.7)		(1.8)		(0.2)		(0.2)		(22.8)
	(5Zw)		(0.7)		(-)		(1.0)		(0.1)		(-)		(-)		(1.8)
1973		6.1	15.9	0.1	3.2	-	5.9		2.9	-	0.4	-	0.1	6.2	28.5
	(5Ze)		(14.8)		(3.2)		(5.5)		(2.0)		(-)		(0.1)		(25.7)
	(5Zw)		(1.1)		(-)		(0.4)		(0.9)		(0.4)		(-)		(2.8)
1974		7.8	17.8	0.1	1.3	-	6.4		0.5	-	0.5	-	0.1	7.9	25.6
	(5Ze)		(16.6)				(6.4)		(0.1)		(0.3)				(24.7)
	(5Zw)		(1.2)						(0.4)		(0.2)				(1.8)
1975*		8.7	15.2	0.1	1.8	-	3.4	-	2.3	-	0.3	-	-	8.8	23.0
	(5Ze)		(14.6)		(1.8)		(3.4)		(2.3)		(0.3)				(22.4)
	(5Zw)		(0.6)												(0.6)

*Provisional

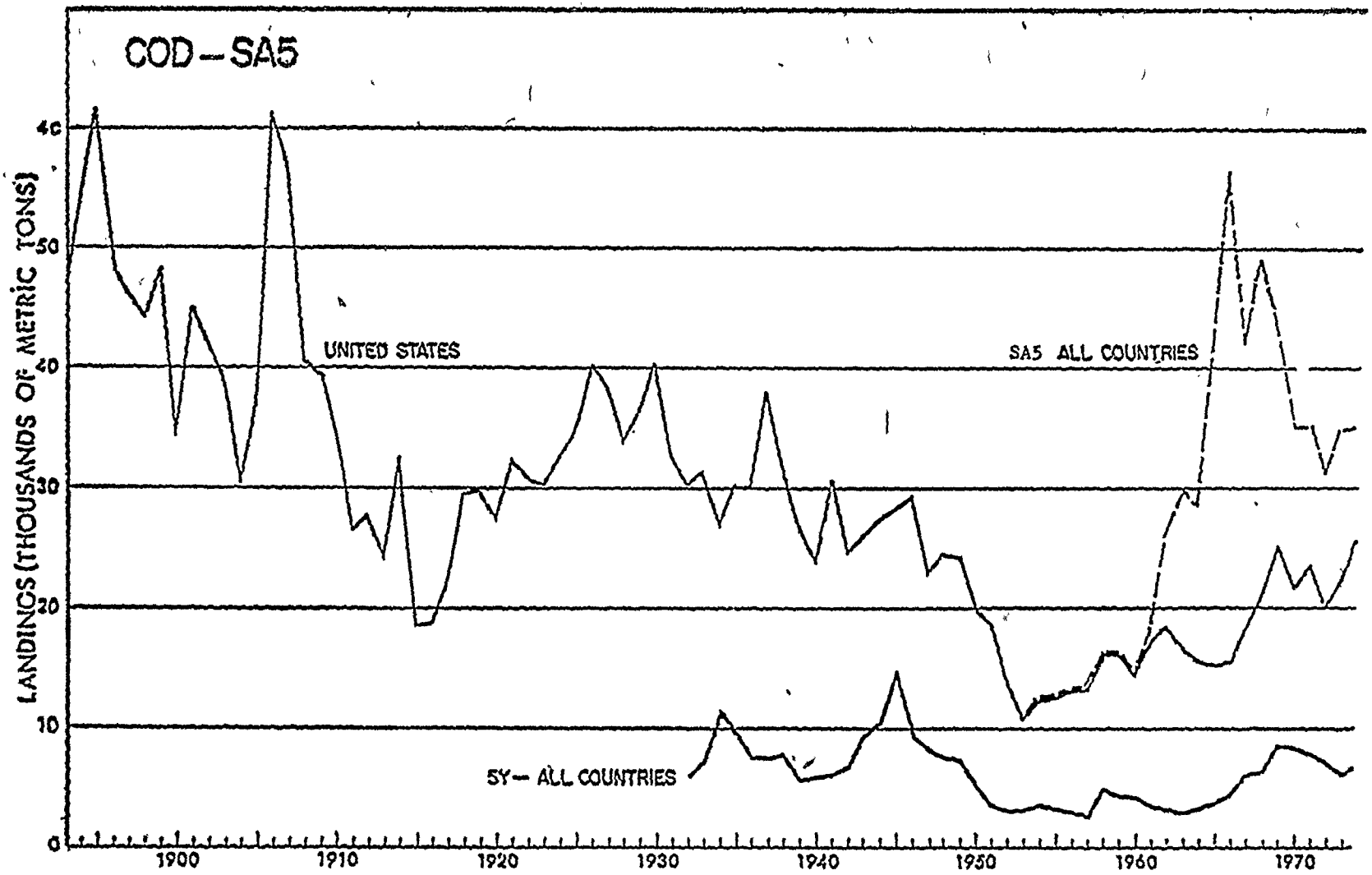


Figure 2. Landings of cod since 1893 for Subarea 5, US and all countries, and for Division 5Y, all countries. Prior to 1956 US landings represented all landings in Division 5Y.

II.1.b. Yellowtail.

II.1.b.(1) Area and Stocks Involved.

Prior to the 1970's yellowtail flounder was primarily sought on three fishing grounds along the Atlantic coast of the United States. They are the Southern New England, Georges Bank and Cape Cod grounds (Figure 3). Tagging experiments and parasite studies performed by Lux (1963) indicated that there is relatively little mixing between yellowtail flounder from the three New England grounds. In general, the Southern New England ground has been the most productive although in recent years, catches from the Georges Bank ground have been higher than from Southern New England. During the 1970's significant catches of yellowtail flounder have been reported from Subarea 6 south of the Southern New England ground. The degree of intermixing between this most recent fishing area and the population of the Southern New England ground is unknown. In practice, the yellowtail flounder west of 69° W. and Subarea 6 (including the Cape Cod and Southern New England grounds) have been managed as a unit. Yellowtail flounder east of 69° W. (including Georges Bank) are also managed as a unit.

II.1.b.(2) Statistical History of Exploitation.

The yellowtail flounder, *Limanda ferruginea*, is an important food fish. It is sought primarily by Massachusetts and Rhode Island otter trawlers from the ports of New Bedford, Provincetown, and Point Judith. The species is also landed in Connecticut, New York, and in the past by foreign fishing fleets.

Yellowtail flounder was unexploited prior to 1935. With the decline in abundance of the thicker-bodied winter flounder, the yellowtail flounder fishery in Subarea 5 west of 69° W. developed rapidly. The fishery prospered through the 1940's declined during the 1950's, then recovered during the 1960's and has once again declined in the 1970's. The fishery for yellowtail flounder in Georges Bank (east of 69° W.) developed more slowly than the Southern New England fishery. The Georges Bank fishery did not yield more than 10,000 m.t. prior to the 1960's while the yield from the Southern New England exceeded this level during the 1930's. The annual catch of yellowtail flounder for each area from 1935 to the present is given in Table 12. Catch data include discard estimates of small fish by domestic vessels. These are based on samples taken at sea and on interviews with vessel captains. In the past, discards have comprised as much as ⅓ of the total catch, although the percentage of discards appears much lower at present. Few, if any, yellowtail flounder are taken by marine recreational fishermen.

Table 12 Yellowtail flounder catches. Catches for each fishing ground.

	West of 69°W			SA6		East of 69°W		
	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3	Domestic Catch m.t.x10-3	Foreign Catch m.t.x10-3	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3
1935	8.9					0.4		
6	10.0					0.4		
7	11.3					0.4		
8	11.5					0.4		
9	14.1					0.5		
40	21.1					0.8		
1	28.7					1.2		
2	40.3					2.1		
3	27.0	6280				1.7	200	
4	16.9	5140				2.2	220	
5	16.2	3470				1.9	280	
6	16.8	4260				1.2	230	
7	18.4	5340				3.1	480	
8	14.8	5610				7.7	1120	
9	8.4	4080				9.8	2490	
50	8.5	4180				5.3	1640	
1	5.0	2790				5.8	1610	
2	5.4	3200				5.0	1600	
3	4.1	2410				3.9	1240	
4	3.7	2240				3.9	1380	
5	5.1	2700				3.9	1230	
6	7.3	3950				2.1	790	
7	11.5	4060				3.1	820	
8	15.2	4770				6.1	1400	
9	13.3	5890				5.5	1970	
60	13.5	5720				5.9	2020	
1	19.4	5760				5.7	1820	
2	21.1	5050				10.3	2350	
3	32.3	6470	0.2			16.6	2420	0.1
4	31.4	5800	---	1.8		19.8	3530	---
5	28.4	7310	1.4	2.1		18.4	4680	0.8
6	25.0	9790	0.7	2.2		13.4	5710	0.3
7	25.3	8200	2.8	5.3		13.9	4130	1.4
8	26.7	7650	3.5	3.3		16.4	4660	1.8
9	19.6	11460	17.6	3.9	0.7	18.5	6710	2.4
70	21.6	6913	2.5	4.1	0.1	21.0	6275	0.3
1	14.5	4558	0.3	6.9	0.9	15.0	6142	0.5
2	11.9	5458	3.0	8.8	0.1	15.3	8099	2.2
3	9.3	4954	0.2	1.8	---	16.5	6833	0.3
4	9.3	5325	0.1	4.9	0.2	15.8	8584	1.0
5	5.5	3769	---	0.7	---	14.5	8670	0.1

II. 1.c. Haddock.

II. 1.c.(1) Areas and Stocks Involved.

Biological data and tagging studies indicate that haddock on Georges Bank east of the Great South Channel are a relatively localized and distinct population. This population is largely separated from stocks in Subarea 4 by the Fundian Channel and the Gulf of Maine, however, some interchange has been documented between this area the areas to the west (Grosslein, 1962). In addition, two small populations may exist inshore in Subarea 5; a southern group has been identified in the Nantucket Shoals and Jeffreys Ledge area, while to the north, migration into Subarea 5 as far south as the Nantucket Shoals and Jeffreys Ledge area has been documented from haddock tagged in Passamaquoddy Bay. Some movement of haddock tagged in the Nantucket Shoals and Jeffreys Ledge areas into the Georges Bank area east of the Great South Channel has also been documented but does not appear to be extensive. In view of the relatively small size of the population resident to the Gulf of Maine-Nantucket Shoals area and uncertainty relative to interchange between this population and the population on Georges Bank, haddock on Georges Bank and in adjacent areas east of Cape Cod (Subdivision 5Ze) have been considered for assessment purposes as a discrete stock, recognizing that an unknown, but apparently slight, amount of interchange may occur between Subdivision 5Ze and areas to the north (Division 5Y) and west (Division 5Zw).

II.1.C.(1) Statistical History of Exploitation.

The decline in market for salt fish early in the century coupled with increased demand for fresh (iced) fish and technological innovations (otter trawling, and adoption of diesel engines) contributed to rapid growth of the Georges Bank haddock fishery during the 1920's. Landings rose steadily to a peak of 115,500 m.t. in 1929, dropped to 59,500 m.t. in 1931, and subsequently fluctuated around 47,000 m.t. annually from 1935-1960. During this period, this was an almost exclusive U.S. fishery (very small catches were made by Canada). In the 1960's, however, foreign nationals (primarily the U.S.S.R. and Canada) intensified their fishing effort upon this stock. Recruitment of the outstanding 1963 year-class in 1965 attracted greatly increased effort by these two countries, while U.S. effort remained relatively

constant, and as a result landings from this stock rose dramatically to an all-time high of 150,000 m.t. Since that year, landings have declined drastically and in 1969 totalled 22,100 m.t. (the final year of unrestricted fishing). Since 1970, annual landings have averaged 7,100 m.t. under quota management. Historical statistics for the New England fishery are given in Table 13; landings by nation since 1960 are given in Table 14.

It can be seen that the U.S.S.R., Canada and Spain have accounted for most of the catch by foreign nationals in recent years.

Recreational catches for Subarea 5 have been significant on occasion with salt-water angling surveys indicating catches of 800, 9,700, 1,100, and 200 m.t. for 1960, 1965, 1970, and 1974 respectively. Almost all of the above catches were taken in Subarea 5.

Table 13 Historical catch data (thousands of metric tons) for the New England haddock fishery, 1917-1959.

Year	Georges Bank (Subdiv. 5Ze)[1]	Total[2]
1917	14.1	-[3]
1918	24.8	-[3]
1919	39.4	40.8
1920	40.6	-[3]
1921	29.7	-[3]
1922	30.8	-[3]
1923	32.9	-[3]
1924	36.9	42.4
1925	41.4	-[3]
1926	51.3	-[3]
1927	73.9	-[3]
1928	98.6	107.8
1929	115.5	116.0
1930	95.0	120.0
1931	59.5	82.1
1932	54.5	68.2
1933	42.2	72.6
1934	25.8	-[3]
1935	41.0	88.3
1936	43.4	-[3]
1937	49.4	76.9
1938	47.8	71.6
1939	54.0	71.6
1940	47.9	64.0
1941	62.9	-[3]
1942	55.4	62.3
1943	46.3	53.2
1944	49.6	60.3
1945	40.5	66.8
1946	53.7	66.8
1947	54.4	73.5
1948	48.3	70.1
1949	42.2	60.7
1950	41.3	71.6
1951	47.3	69.5
1952	43.2	73.2
1953	35.9	63.2
1954	46.4	70.3
1955	40.8	61.2
1956	48.9	69.0
1957	46.2	60.5
1958	35.5	54.2
1959	35.9	51.1

[1] Source: ICNAF Res. Doc. 69/90.

[2] Total New England Fisheries (including Subarea 4) as reported in Fishery Statistics of the US (historical summary for 1965).

[3] Not reported.

Table 14 Commercial landings of haddock (metric tons) from Subarea 5 and Statistical Area 6 by country, 1960-1975.

Year	Country								
	Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
					Div. 5Y[2]				
1960	383	-	-	-	-	-	4,541	-	4,924
1961	56	-	-	-	-	-	5,297	-	5,353
1962	107	-	-	-	-	-	5,003	-	5,110
1963	3	-	-	-	-	44	4,742	-	4,789
1964	70	-	-	-	-	-	5,383	-	5,453
1965	159	-	-	-	-	-	4,204	-	4,363
1966	1,125	-	-	-	-	-	4,579	-	5,704
1967	589	-	-	-	-	-	4,907	-	5,496
1968	120	-	-	-	-	-	3,437	-	3,557
1969	59	-	-	230	-	-	2,423	-	2,712
1970	38	-	-	63	-	-	1,457	-	1,558
1971	85	-	-	26	-	-	1,194	1	1,306
1972	23	-	-	-	-	4	909	-	936
1973	49	-	-	-	-	-	509	-	558
1974	198	-	-	-	9	-	622	-	829
1975[4]	78	-	-	-	-	-	1,183	-	1,261
					Subdiv. 5Ze[2]				
1960[3]	77	-	-	-	-	-	40,800[5]	-	40,877
1961[3]	133	-	-	-	-	-	46,384[5]	-	46,517
1962[3]	3,461	-	-	-	-	1,134	49,409[5]	-	54,004
1963[3]	8,379	-	-	-	-	2,317	44,150[5]	-	54,846
1964[3]	11,625	-	-	2	464	5,483	46,512	-	64,086
1965[3]	14,889	28	-	10	-	81,882	52,823	730	150,362
1966[3]	18,292	29	-	1,111	29	48,409	52,918	486	121,274
1967[3]	13,040	-	12	1,355	3	2,316	34,728	4	51,458
1968	9,292	1,145	-	2,845	-	1,308	25,197	29	39,816
1969	3,990	458	-	1,201	-	51	16,443	4	22,147
1970	1,978	15	-	782	-	98	8,400	1	11,274
1971	1,630	1	225	1,240	-	292	7,301	16	10,705
1972	609	1	14	1,098	-	126	3,866	5	5,719
1973	1,563	-	-	386	-	574	2,776	3	5,302
1974	462	-	-	764	426	97	2,396	-	4,145
1975[4]	1,353	-	-	-	-	8	3,985	-	5,346

Table 14, (Cont'd) Commercial landings of haddock (MT, live) from Subarea 5 and Statistical Area 6 by country, 1960-1975

	COUNTRY								
	Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
					Total Subarea 5 and Statistical Area 6				
1960[6]	460	-	-	-	-	-	45341	-	45801
1961[6]	189	-	-	-	-	-	51681	-	51870
1962[6]	3566	-	-	-	-	1134	54412	-	59114
1963[6]	8382	-	-	-	-	2361	48892	-	59635
1964[6]	11595	-	-	2	464	5483	51895	-	69539
1965[6]	15043	28	-	10	-	81882	57027	730	154725
1966	19417	29	-	1111	29	48516	57510	486	127098
1967	13629	-	12	1355	3	2316	39659	15	56989
1968	9443	1327	402	3014	-	1397	28914	33	44530
1969	4049	458	65	1431	-	65	18892	16	24977
1970	2916	15	-	845	-	103	9874	11	12864
1971	1715	1	225	1336	-	374	8506	17	12176
1972	632	1	14	1098	-	141	4779	5	6670
1973	1612	-	-	386	-	602	3289	3	5892
1974[4]	660	-	-	764	568	111	3018	-	5121
1975[4]	1431	-	-	-	-	8	5168	-	6607

1 Includes landings for Bulgaria, France, FRG, GDR, Japan and non-members.
2 From ICNAF statistical bulletins 10-24.
3 Landings not allocated by subdivision (5Ze or 5Zw).
4 From provisional ICNAF statistics for 1976 (incomplete).
5 Subarea 5 NK landings were added into 5Z.
6 No statistical area 6 landings data are available prior to 1966, but haddock landings for the area were apparently negligible.

II.1.d. Significance of the Historical Domestic Fisheries.[1]

II.1.d.(1) Introduction.

The FMP is designed to address haddock, cod, and yellowtail flounder. However, other species are also landed by the same vessels that land the subject species. Since the available performance data relate to the groundfish fishery in general, the discussion below also relates to the entire groundfish sector, with particular reference to the subject species. Further, the vast majority of these species are landed in New England ports. Therefore, the discussion below is essentially on the New England groundfish industry (harvesting level). The following section first discusses the industry during the period 1950-62. The second section presents similar data for the period 1960-1971. Recent conditions are contained in the final section. This section does not address the significance of the recreational fisheries. An economic assessment of the recreational fisheries will be included as the requisite studies are completed.

II.1.d.(2). The Industry 1950-62.

II.1.d.(2)(a) Overview.

The New England groundfish fleet (mostly otter trawlers) is usually considered a separate segment of the entire New England Fishing Industry. These vessels land haddock, ocean perch, flounder, cod, whiting, pollock, hake and cust. The groundfish fleet reached its peak of 795 vessels in 1951. By 1962 this fleet had dwindled to 592 vessels, a decline of 25.5 percent. During the same period, the number of fishermen employed on these vessels dropped from 5,298 to 3,189. This represented a considerable attrition of both capital and labor from one of the largest segments of the New England fishing industry. With this loss of factors of production, the groundfish catch declined from 681.3 million pounds in 1951 to 515.8 million pounds in 1962—a decline of 24.3 percent. It should be pointed out that although the groundfish segment comprised 81.4 percent of the capital in the industry (using the number of vessels as a rough indicator) it employed only 14.8 percent of the industry's fishermen. This is due presumably to the high capital/labor ratio in groundfishing compared to lobstering and shell fishing. In addition, employment in fisheries other than groundfish is somewhat overstated since it includes more part-time workers. The movement of both capital and labor from the industry produced three investigations by the United States Tariff Commission. The Commission found in two investigations that under the competitive pressure of increased imports of groundfish fillets, the size of the New England groundfish fleet had been reduced significantly. The Tariff Commission's recommendation to increase import duties in each case was turned down because it was felt that such an increase might lead to retaliation and thus jeopardize our relations with Canada and Iceland. Although not leading to any specific action, the Tariff Commis-

[1] Portions of this section are based on Bell (1966) and Vondruska (1972).

sion studies did provide a great deal of data useful in assessing the financial returns in the groundfish industry at that time. It should be pointed out that the increased imports were partially the results of the rebuilding of foreign fishing fleets under the Marshall Plan and other subsidies that were made by foreign governments to their fleets. Such benefits were not made available to the domestic fisheries.

II.1.d.(2) (b) Returns to the Factors of Production.

From the Tariff Commission's investigations, other studies of the groundfish industry and the government sources, series on returns to capital and labor were constructed. In 1951, a sample of groundfish vessels thought to be representative by the Tariff Commission revealed that profits (before taxes) per trawler in New England averaged $13,069.46. By 1953, another sample of vessels revealed that the average New England trawler was experiencing an operating loss (before taxes) which continued throughout the 1953–57 period. With this decline in vessel earnings, it is no wonder that the groundfish fleet dwindled from its peak of 795 vessels in 1951.

In 1951, the average share (or annual earnings) per groundfisherman was 5 percent above those in all U.S. industry. By 1953, however, groundfishermen's earnings were 23 percent below those received in all U.S. industry. Table 15 indicates the slow but steady deterioration of the earnings position of both capital and labor in the groundfish segment of the New England industry during this period.

Table 15

Returns to Capital and Labor in New England Groundfishing

	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
Capital:													
Vessels (number)	672	795	769	776	759	684	675	649	657	628	641	587	592
Average Profit per Vessel[1] (In dollars before taxes)	+5,000	+13,069	+ 6,605	- 1,706	- 2,284	- 2,431	- 3,525	8,300	n.a.	n.a.	n.a.	n.a.	n a
Labor:													
Fishermen (number)	4,512	5,298	4,732	4,714	4,561	4,009	3,905	3,689	3,658	3,537	3,476	3,142	3,189
Average Share per Fisherman (In dollars)	3,161	5,200	3,142	2,541	2,745	2,868	3,042	3,374	3,885	3,772	3,157	3,508	3,848
Crew Per Vessel	6.71	6.66	6.15	6.07	6.01	5.86	5.79	5.68	5.57	6.01	5.42	5.35	5 39
Average Annual Earnings per Employee in United States[2]	3,088	3,231	3,414	3,586	3,670	3,847	4,042	4,211	4,349	4,570	4,712	4,837	5,016
Ratio of Fisherman's Earnings to Annual Earnings per Employee in United States	1.05	0.99	0.92	0.71	0.75	0.75	0 75	0.80	0.89	0.83	0.67	0.73	0 77

Source:

[1] 1950-56: U. S. Tariff Commission, Groundfish Fillets (1954 and 1965): Report to the President on Escape Clause Investigation Nos. 33, 47.
1957-58: E. J. Lynch, R. H. Doherty, and G. P. Draheim, The Groundfish Industries of New England and Canada, (U. S. Fish and Wildlife Service, Circular 121, Washington, D. C., 1961).

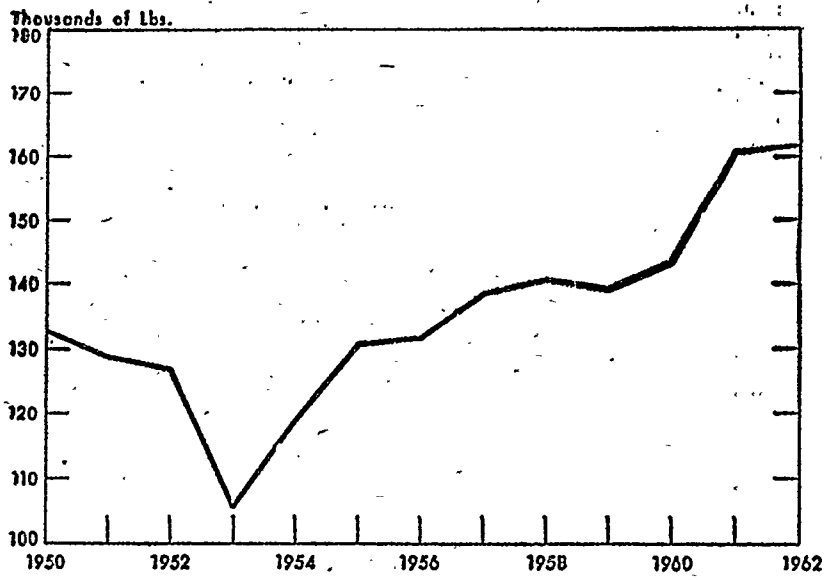
[2] U. S. Department of Commerce, Survey of Current Business, 1950-62.

II.1.d.(2) (c) Prices, Productivity and Costs.

Although New England groundfish prices fluctuated from year to year, during the 1952–60 period they exhibited no pronounced secular trend over the postwar period. Because of the withdrawal of factors of production, the decline in groundfish landings would lead (*cet. par.*) to higher ex-vessel prices (i.e. prices received by fishermen for their landed catch). However, the industry would experience lower total revenue since the demand curve for most groundfish species is highly elastic at the primary market level. This highly elastic nature of the demand curve is due to the existence of foreign substitutes and competing products such as meat and poultry. On the other hand, increases in consumer demand (i.e. expansion in population, etc.) will result in a shift in the demand curve, a rise in ex-vessel prices, and consequently total revenue. Even though U.S. population or consumer demand expanded rapidly in the postwar period there was no secular increase in ex-vessel prices as foreign imports supplied an increasing share of the market for groundfish. In fact, both revenue and output in the New England groundfish industry declined by the same percentage over the 1951–62 period, thereby resulting in constant prices during that decade. It may be concluded that the secularly constant New England ex-vessel price was partially produced by the increased pressure of foreign imports even though consumer demand increased and domestic landings fell.

Figure 4

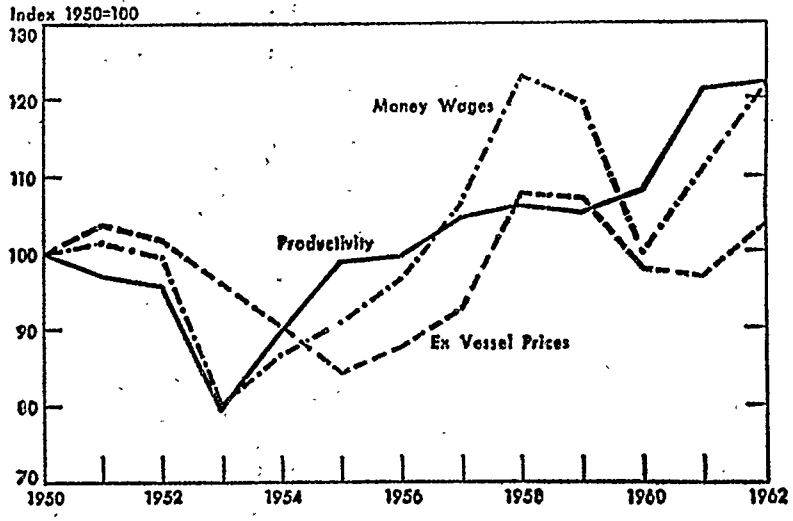
GROUNDFISH OUTPUT PER FISHERMAN IN NEW ENGLAND, 1950 – 1962



Source: Fishery Statistics of the United States and special report by the Bureau of Commercial Fisheries

Figure 5

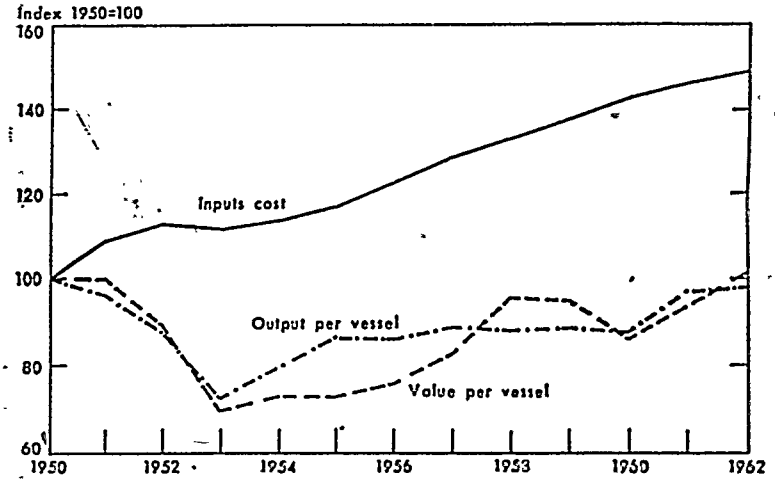
AVERAGE EX VESSEL PRICES, LABOR PRODUCTIVIVITY, AND MONEY WAGES IN THE NEW ENGLAND GROUNDFISH INDUSTRY, 1950–1962



Source: Fishery Statistics of the United States and special report from the Bureau of Commercial Fisheries

Figure 6

LANDINGS AND REVENUE PER VESSEL AND COST INDEX OF INSURANCE, REPAIR, AND MAINTENANCE IN THE NEW ENGLAND GROUNDFISH INDUSTRY, 1950 — 1962



Source: (i) Cost Index - Shipbuilding, Construction and Repair—U S Maritime Administration, Miscellaneous Textile Products-Fish Gear—Bureau of Labor Statistics, Insurance and Administration Expense—Prices and Costs in American Industries C.E.D Publication, (ii) Output and Value Indices—Fishery Statistics of the United States

The groundfish industry had apparently experienced some technological advance which raised labor productivity (hence money wages). The data revealed that output and revenue declined by 24 percent while employment dropped 40 percent over the 1951–62 period. However, fishermen's wages failed to keep pace with the rest of the economy and this deterioration resulted in an attrition of labor from the industry. Figure 4 shows the course of groundfish output per fisherman on an annual basis over the 1950–62 period. From 1950–53 labor productivity actually declined and did not reestablish its 1950 level until 1955. The slow growth of labor productivity is certainly not surprising since groundfish vessels and their equipment had not changed greatly over the postwar period. The side trawling fishing technique has been used for years in the industry.

Figure 5 shows the change in labor productivity, average ex-vessel prices for groundfish and fishermen's money wages. Upward movements in labor productivity seem to have produced a rising wage in the fishing industry. However, labor left the fishing industry due to the steadily deteriorating relative wage levels and because of the flight of capital (or decline in the fleet).

Profits in the groundfish industry were greatly influenced by rising fixed costs. Landings per vessel (or firm) changed little over the postwar period. Over the 1951–62 period, the number of groundfish vessels and pounds landed decreased by approximately the same percentage. As indicated before, ex-vessel prices failed to increase; therefore, revenue per vessel did not increase from 1951–62: On the other hand, such fixed costs as repair and maintenance, insurance, and administrative expenses increased over this period. A rough fixed cost index was constructed from these components. Results show that the index increased much more rapidly than value of the landings per vessel (or firm) (Figure 6). As a result, return on capital declined as did new investment in the industry.

The basic conclusion is that ex-vessel prices were an important factor in the postwar decline of groundfishing in New England. The secular consistency of ex-vessel prices resulted partly from an increasing supply of foreign imports which offset rising demand for groundfish products. The secularly constant ex-vessel prices coupled with rising costs for repair, insurance and maintenance produced a pressure on profits as revenue per vessel remained the same throughout the period. The adverse profit position created disinvestment (a decline in the fleet). Money wages in groundfishing increased slowly, presumably due to rising labor productivity. The deterioration of relative wages and the attrition of capital resulted in a contraction in employment. Again the increase in imports was partially the results of subsidies being made available to foreign vessels that were not made available to U.S fishermen.

II.1.d.(2)(d) Selected Data for Haddock, Cod and Yellowtail Flounder, 1950-62.

HADDOCK

Table 16 contains data on total U.S haddock landings in thousands of pounds and thousands of dollars for the 1950-62 period. Tables 17 and 18 contain data on New England landings of haddock for selected years during the 1952–62 period. Clearly, New England landings constitute essentially all of the U.S. haddock landings, and Massachusetts landings account for almost all of the New England landings. While landings declined during the 1950's, there was an upturn during the early 1960's. The actual value of the haddock landings in 1962 was essentially the same as in the early 1950's. Thus, the deflated value (while not presented here) was less in 1962 than in the early 1950's.

Table 16. U. S. Landings and Ex-Vessel Value of Haddock 1950 - 1962

	Haddock	
	Quantity	Value
	Thousand pounds	Thousand dollars
1950	158,559	11,834
1951	154,103	11,968
1952	161,497	12,506
1953	139,603	10,528
1954	154,934	10,010
1955	135,035	8,101
1956	152,246	9,587
1957	133,571	10,198
1958	119,554	11,732
1959	112,629	10,939
1960	118,697	9,398
1961	133,597	9,907
1962	134,250	10,913

Table 17 --New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut
	Thousands of Pounds				
1950	7,442	1	150,025	242	54
1955	4,566	---	130,093	320	50
1960	3,834	20	114,643	98	20
1961	2,940	35	130,478	64	19
1962	2,545	30	131,558	29	7

Table 18 --Value of New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut
	Thousands of Dollars				
1950	524	nil	11,228	15	4
1955	276	---	7,805	17	2
1960	290	2	9,091	7	1
1961	227	3	9,666	4	1
1962	196	3	10,701	2	1

YELLOWTAIL

Table 19 contains data on U.S. landings of yellowtail flounder during the 1950-62 period. Landings during this period more than doubled between 1950 and 1962. Massachusetts again was the dominant state for yellowtail landings. Within Massachusetts, New Bedford was the dominant port.

COD

Table 20 contains data on U.S. landings of cod in thousands of pounds and thousands of dollars. Table 21 contains data on cod landings by state in New England. Again, New England accounted for essentially all of the U.S. landings and Massachusetts accounted for essentially all of New England landings. Cod landings declined by 30% between 1950 and 1960, however, there was some increase during 1961 and 1962. Here too, with the actual value of the catch in 1962 and 1952 being equal, the value in real terms had declined.

PRICES

Table 22 presents the actual ex-vessel prices for cod, haddock, and flounders during the 1950-62 period in Massachusetts. As stated previously, prices for all groundfish were essentially constant despite the decline in landings and increases in consumer demand (yellowtail landings increased, however, during this period). These data reflect the overall trend. The role of foreign supply and its impact on prices was discussed previously.

Table 19 Annual U.S. Landings of Yellowtail Flounder in New England States, New York & New Jersey; 1938-1971

(in 000 pounds)

Year	Maine	Mass.	R. I.	Conn.	Total New England	New York & New Jersey	Total
1950	145	21399	1029	302	22875	1241	24116
1951	82	16735	723	100	17640	774	18414
1952	55	15306	1334	49	16744	234	16978
1953	58	12627	1014	24	13723	50	13773
1954	24	10972	1681	30	12707	56	12763
1955	30	12661	1448	60	14199	174	14373
1956	52	11756	2444	161	14413	230	14643
1957	41	19910	2230	91	22272	179	22451
1958	64	29519	2984	226	32793	532	33325
1959	113	25932	3012	139	29196	615	29811
1960	65	27701	2110	160	30036	1171	31207
1961	34	34667	2337	107	37146	2082	39228
1962	17	50835	5730	79	56661	3929	60590

Table 20 U. S, Landings and Ex-Value of Cod 1950-1962

Year	Cod Quantity	Cod Value
	Thousand pounds	Thousand dollars
1950	57,490	3,623
1951	50,023	3,635
1952	43,685	3,158
1953	32,660	2,206
1954	35,824	2,183
1955	35,582	2,156
1956	35,127	2,225
1957	34,058	2,178
1958	41,352	3,042
1959	46,481	3,312
1960	40,381	2,696
1961	46,591	2,995
1962	46,910	3,294

Table 21. New England Landings of Cod, 1950-1962

(THOUSANDS OF POUNDS)

YEAR	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT	TOTAL
1950	6,613	4	45,858	1,227	256	53,968
1951	5,293	12	40,711	1,161	302	47,479
1952	4,614	16	35,928	673	170	42,401
1953	3,769	-	27,465	607	58	31,899
1954	3,689	-	29,991	1,320	239	35,239
1955	2,853	-	28,526	794	186	32,369
1956	2,745	-	29,127	733	154	32,760
1957	2,352	-	28,390	839	330	31,911
1958	2,735	-	33,593	1,247	209	37,784
1959	2,694	-	36,576	1,246	242	40,758
1960	2,897	20	31,266	822	250	35,255
1961	2,507	30	38,166	1,066	400	42,169
1962	2,260	30	40,647	699	290	43,946

Table 22 Actual Ex-vessel Price Data for Cod, Haddock and Flounder (¢/lb)

MASSACHUSETTS

Year	Cod	Haddock	Flounder*
1950	6 2	7 5	11 1
1951	7 0	7 7	13.8
1952	7 2	7 6	13 6
1953	6 7	7 5	12 4
1954	5 9	6 4	12 0
1955	5 8	6 0	12 6
1956	6 1	6.3	12 8
1957	6 0	7.3	13 0
1958	7 5	9 8	11 8
1959	7 0	9 7	12 8
1960	6 5	7 9	12 2
1961	6 2	7 4	10 6
1962	6 8	8 2	9 7

Source: Prices Received by Fishermen, 1939-1974, Current Fishery Statistics, No 6600, 1975

*These are the prices for all flounder

II. 1 d.(3) The Industry During the Early 1960's–70's with Massachusetts

II. 1.d.(3) (a) Overview

Declines continued to occur in the New England landings of several major fish species between 1960 and 1971, namely: herring, ocean perch, sea scallops, yellowtail flounder, haddock and whiting

Despite the decline in landings, the total number of fishermen in New England was virtually the same in 1960 and 1970, although the number of fishermen on vessels followed a downward trend, from 5 927 in 1950 to 3,236 in 1970 (Table 23).

The New England fishing fleet declined by 56 vessels, 1960–70 At least 92 vessels were added to the fleet and at least 125 were lost at sea Scrapping retirement and shifts to other regions or to nonfishing activities account for other parts of the decline

Table 23 New England Fishermen and Fishing Craft, 1950 70

	Fishermen				Motor Vessels		Boats 2/	
	On	On Boats and Shore						
Year	Vessels	Regular	Casual	Total	Number	Gross Tonnage 1/	Motor	Other
1950	5,927	8,724	8,783	23,434	865	28 827	8,459	4,766
1951	6,100	7,888	9,651	23,639	878	29 503	8,792	4 249
1952	6,124	7,484	9,889	23,497	915	30 957	9 092	3,717
1953	7,001	7,777	11,614	26,392	1,071	36,748	10,491	2,938
1954	5,544	8,032	9,772	23,348	885	30,138	11,711	2,305
1955	5,226	7,267	10,075	22,566	846	28,661	11,946	1,806
1956	5,151	7,904	8,321	21,376	831	28,090	11 280	1,375
1957	4,914	7,551	9,823	22,288	799	27,295	10 972	828
1958	4,517	7,112	10,160	21,789	775	26,479	10,868	921
1959	4,501	7,204	9,346	21 051	758	26,282	10,703	674
1960	4,349	7,510	10,341	22,200	742	44 514	11,356	572
1961	4,231	7,044	10,462	21,737	738	44,242	11,155	709
1962	4,169	6,640	10,727	21,536	727	45,476	10,414	699
1963	4,202	5,786	11,440	21,428	733	47 581	10,070	676
1964	4,058	5,599	10,537	20,194	721	47,084	10,128	465
1965	3,952	5,399	10,084	19,435	703	46,929	10,412	403
1966	3,874	5,057	9 587	18,518	704	48,416	9,555	344
1967	3,847	4,919	9,277	18,043	714	48,350	9,294	354
1968	3,689	5,164	9,327	18,180	695	46,433	9,429	297
1969	3,537	5,501	10,911	19,949	695	48,655	10,549	251
1970	3,236	6,885	12,097	22,218	686	43,798	11,703	252

1/Net tonnage, 1930 59

2/Excludes accessory boats

Source: BCF (now NMFS) Fishery Statistics of the U.S., annual editions, and NMFS Statistics and Market News Division

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Massachusetts fish otter trawling operations account for about 50–60 percent of the number of New England vessel fishermen, vessels and vessel tons, and largely explain declines in the numbers. Haddock was the leading species caught by Massachusetts otter trawl fishermen, and haddock landings declined from 114 million pounds, valued at $9 million in 1960 to 25 million pounds in 1970, valued at $6 million. The deflated average ex-vessel price of Massachusetts otter trawl landings of haddock increased from 8.9 cents to 19.4 cents per pound between 1960 and 1970.

Despite the decline in fishermen and vessels, the deflated value of catch was higher in 1970 than in 1960, although not as high as in 1965. Also, the average tonnage of vessels increased and the total tonnage decreased far less than is suggested by the decline in vessel numbers, comparing 1960 and 1970.

Expressed in 1967 dollars, the value of output per full-time equivalent fisherman was $12,413 in 1970, compared to $9,894 in 1960, but below that in 1965.

Data presented in Table 24 are for all Massachusetts fish otter trawlers and do not reveal the species emphasized by vessels operating out of different ports. Boston vessels have emphasized cod and haddock landings; New Bedford, flounder, especially yellowfish; and Gloucester, whiting and haddock. The weight of landings of these species declined since 1960, but ex-vessel prices increased. Among these species, foreign landings surpassed U.S. landings in 1965–66 for haddock in ICNAF Subarea 5. Canada, U.S.S.R. and Spain were the leading countries besides the United States. A similar story applies to cod. For yellowtail flounder, however, the United States has been the leading catcher in all years, with substantial secondary harvests by U.S.S.R. vessels only in 1969.

Table 24 --Massachusetts fish otter trawl vessel and boat fishery

	1960	1965	1970
Catch quantity, pounds			
haddock	112,440,900	128,568,600	23,517,500
other catch	283,961,500	263,582,100	203,892,800
total	396,402,400	392,150,700	227,410,300
Catch value, current dollars			
haddock	8,875,943	13,007,680	5,317,936
other catch	14,126,945	16,743,674	22,124,595
total	23,002,888	29,751,354	27,442,531
Fishermen			
on vessels	2,609	2,486	1,887
on boats & shore			
regular	12	-	14
casual	-	7	-
total	2,621	2,493	1,901
Vessels			
number	422	399	343
tonnage	28,664	30,556	26,686
average tonnage	68	77	78
Boats, motor	7	6	7
Gear (trawls)	429	405	350
Productivity (pounds)			
catch per man	151,241	157,522	119,627
catch per craft	924,015	968,273	649,744
catch per trawl	924,015	963,273	649,744
Deflated value of catch, dollars			
per man	9,894	12,646	12,413
per craft	60,451	77,736	67,418

Source: Fishery Statistics of the U.S., annual editions, and NMFS Statistics and Market News Division.

Note: Catch and deflated value of catch per man are for full-time fisherman equivalents (the sum of vessel fisherman, regular boat and shore fisherman, and one-half casual boat and shore fisherman)

II.1.d.(3) (b) Vessel Earnings.

Table 25 contains data on the vessel earnings in the Boston fleet during the mid-1960's and Table 26 presents data on the New Bedford vessel earnings during the mid-1960's. For both ports, the net return on sales was extremely low, and even negative for the New Bedford vessels in 1967. However, this represented a considerable improvement as compared to the performance during the 1950's.

II.1.d.(3) (c) Fishermen's Earnings.

Tables 27 and 28 present data on fishermen's earnings during the mid-1960's in Boston and New Bedford. In both ports, earnings of the fishermen were above the real wage in Massachusetts manufacturing. Again this was a considerable improvement over the 1950's performance.

Table 25.—Average costs and earnings of Boston large trawlers, 1964-66

Item	Unit	1964	1965	1966
Vessels	Number	23	23	15
Length of vessels	Feet	109	109	114
Trips	Number	27.2	26.1	26.6
Average length of trip	Days	9.3	9.1	9.0
Crew size	Number	15.7	15.7	16.3
Man days at sea	Days	253	238	250
Landings	Pounds	2,524,000	2,348,000	2,556,000
Average price	Cents per pound	9.5	10.8	11.5
Gross receipts	Dollars	239,884	253,279	294,502
Trip expenditures				
Food	do	14,668	13,897	15,717
Fuel & lube	do	21,141	19,863	22,939
Ice & icing	do	6,499	6,409	6,827
Other	do	9,192	8,810	8,245
Subtotal	do	51,500	48,979	53,728
Repair & maintenance				
Gear	do	13,965	13,965	14,653
Hull & engine	do	17,518	17,518	18,100
Subtotal	do	31,483	31,483	32,753
Fixed charges				
Interest	do	—	—	—
Insurance	do	15,403	15,403	16,351
Taxes (employee)	do	7,446	7,446	7,804
Administrative	do	8,915	8,915	9,284
Subtotal	do	31,764	31,764	33,439
TOTAL CASH EXPENDITURES	do	114,747	112,226	119,920
Share to labor & capital				
Wages	do	100,329	111,180	130,466
Captain's commission	do	9,100	9,624	11,240
Owner's share (before depreciation)	do	15,708	20,249	32,876
TOTAL SHARE EXPENDITURES	do	125,137	141,053	174,582
Depreciation	do	11,364	11,364	12,280
Net return before taxes	do	4,344	8,885	20,596

Table 26.—Average costs and earnings of New Bedford trawlers, 1967-68

Item	Unit	1967	1968
Vessels	Number	31	33
Length of vessels	Feet	69.3	69.7
Trips	Number	25.7	26.6
Average length of trip	Days	8.2	8.3
Crew size	Number	5.8	5.9
Man days at sea	Days	211	221
Landings	Pounds	710,843	816,806
Average price	Cents per pound	12.69	12.87
Gross receipts	Dollars	90,206	105,123
Trip expenditures			
Food	do	5,582	5,952
Fuel & lube	do	7,441	7,810
Ice & icing	do	2,875	3,534
Other	do	1,018	1,303
Subtotal	do	16,916	18,599
Repair & maintenance			
Gear	do	4,077	4,169
Hull & engine	do	8,595	8,122
Subtotal	do	12,672	12,291
Fixed charges			
Interest	do	1,213	1,342
Insurance	do	5,369	6,881
Taxes (employee)	do	3,607	3,977
Administrative	do	1,071	1,133
Subtotal	do	11,260	13,333
TOTAL CASH EXPENDITURES	do	40,848	44,223
Share to labor & capital			
Wages	do	44,901	52,252
Captain's commission	do	2,889	3,434
Owner's share (before depreciation)	do	1,568	5,214
TOTAL SHARE EXPENDITURES	do	49,358	60,900
Depreciation	do	4,637	4,834
Net return before taxes	do	(-3,069)	380

Table 27.—Earnings of fishermen in the Boston trawler fleet, 1964-66

Item	1964	1965	1966
		Number	
Vessels	23	23	15
Average crew size	15.7	15.7	16.3
		Dollars	
Gross receipts per vessel	239,884	253,279	294,502
Share to labor per vessel	109,429	120,804	141,706
Average share per man	6,970	7,694	8,694
Food expenditures per man	934	835	964
Average share per man including food	7,904	8,579	9,658
Real average share per man including food1/	8,508	9,078	9,936
Wage in Massachusetts manufacturing	5,741	5,913	6,235
Real wage in Massachusetts manufacturing1/	6,180	6,257	6,415

1/ Divided by consumer price index, 1967=100.

Table 24 --Earnings of fishermen in the New Bedford trawler fleet, 1967-68

Item	1967	1968
	Number	
Vessels	31	33
Average crew size	5.8	5.9
	Dollars	
Gross receipts per vessel	90,206	105,123
Share to labor per vessel	47,790	55,686
Average share per man	8,240	9,438
Food expenditures per man	962	1,009
Average share per man including food	9,202	10,447
Real average share per man including food 1/	9,202	10,026
Wage in Massachusetts manufacturing	6,514	6,944
Real wage in Massachusetts manufacturing 1/	6,514	6,664

1/ Divided by consumer price index, 1967=100.

II.1.d.(3)(d) Species Trends.

HADDOCK

Tables 29 and 30 show the weight and value of haddock landings during the 1963–1970 period. A drastic decline in haddock landings occurred during the period with the 1970 catch being only about 25 percent of the 1963 catch. The value of the haddock landings also declined to about 50 percent of the 1963 level.

YELLOWTAIL

Tables 31 and 32 contain data on the weight and value of yellowtail flounder landings. The decline in the catches of this species was not nearly as severe as the decline in the haddock catch during the 1963–1970 period. The drastic decline in yellowtail flounder landings occurred during the 1970's. Yet, the smaller catch had a greater value than in 1963.

COD

Table 33 presents data on the weight and value of cod landings during the 1963–71 period. Overall, cod landings increased both in weight and value during this period.

Table 29. --New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Pounds					
1963	2,877	40	120,940	21	3	123,881
1964	2,948	55	130,373	68	6	133,450
1965	1,881	60	131,863	74	--	133,878
1966	1,773	55	130,182	252	2	132,264
1967	2,351	60	95,840	187	--	98,438
1968	1,790	12	68,478	348	--	70,628
1969	983	9	44,421	396	--	45,809
1970	1,013	7	25,308	553	--	26,881
1971						

Source: Fishery Statistics of the U.S., annual editions. BCF. (now. NMFS).

Table 30 --Value of New England haddock landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Dollars					
1963	245	4	11,444	2	nil	11,695
1964	260	6	11,563	5	nil	11,839
1965	184	7	13,430	7	--	13,628
1966	174	7	13,735	24	nil	13,940
1967	215	6	10,855	16	--	11,092
1968	190	2	9,051	37	--	9,290
1969	139	2	7,561	61	--	7,763
1970	184	2	5,745	113	--	6,044
1971						

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 31 .--New England Yellowtail Flounder Landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Pounds					
1963	-		68,875	8,998	136	78,009
1964	5		70,974	8,249	49	79,277
1965	7	n.a.	70,920	5,602	38	76,567
1966	22		57,471	5,855	53	63,401
1967	78		46,449	5,793	67	52,387
1968	13		57,761	6,533	34	64,341
1969	76	8	56,282	8,375	65	64,807
1970	155	48	57,462	8,925	747	67,337
1971						54,274

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 32.--Value of New England Yellowtail Flounder Landings.

Year	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total
	Thousands of Dollars					
1963	-		4,576	472	7	5,055
1964	1		4,879	471	3	5,353
1965	1	n.a.	6,716	412	3	7,132
1966	2		7,157	607	5	7,771
1967	6		4,961	487	6	5,460
1968	1		5,999	574	3	6,577
1969	8	1	7,581	954	8	8,552
1970	13	5	8,659	1,115	93	9,885
1971						8,408

Source: Fishery Statistics of the U.S., annual editions. BCF (now NMFS).

Table 33 U.S. Landings of Cod during the 1963-1971 Period

Year	Weight (1,000 lbs)	Value ($1,000)
1963	42,177	3,106
1964	38,746	2,669
1965	36,048	2,877
1966	37,756	3,196
1967	44,400	3,578
1968	49,217	3,463
1969	57,502	4,838
1970	53,225	5,742
1971	52,824	6,345

II.1.d.(3)(e) Prices, 1963–71.

Table 34 presents data on prices during the 1963 to 1971 period. As can be seen, the decline in landings for haddock and yellowtail coupled with increasing consumer demand during this period led to almost tripling the price of haddock and a doubling the price of yellowtail. The price of cod also increased, in spite of increased supplies. Clearly, the demand situation for cod improved during the period.

II.1.d.(3)(f) Summary.

While the number of vessels and fishermen continued to decline during the 1960's, the average profit and the average real earnings of the vessels and fishermen that remained in the fishery improved in the mid-1960's compared to mid-1950's. The productivity of these vessels was higher in 1965 than in 1960 but declined by 1970. In spite of increasing imports throughout the decade, the ex-vessel prices of the principal groundfish species (haddock, cod, and yellowtail flounder) increased considerably, reflecting apparent increases in demand (and also domestic supply conditions) By 1970, the production of the remaining vessels and crew decreased, but the rising prices resulted in increases in the real value of the catch per vessel and per fisherman. No information on the net revenue of the vessels in 1970 is available.

Finally, while haddock landings underwent a tremendous decline during the 1960's, the decline in yellowtail flounder landings was moderate; cod landings even increased.

Table 34. Ex-vessel Prices for Cod, Haddock and Flounders in Massachusetts (¢/lb)

Year	Cod	Haddock	Flounder 2/
1963	7.1	9.5	8.4
1964	7.6	8.9	8.0
1965	8.0	8.9	9.5
1966	9.0	9.2	12.7
1967	8.2	11.3	11.5
1968	7.3	13.2	11.4
1969	8.6	17.0	13.7
1970	11.2	22.7	15.3
1971	12.4	26.1	16.7

2/ This is for all flounders

II.1.d.(4) Recent Trends—1971–75.

II.1.d.(4)(a) Overview.

The decline in the number of vessels and fishermen in the New England groundfish fishery continued during the 1971–1975 period. In Massachusetts, the number of otter trawls (vessels) declined 8 percent from 343 in 1970 to 315 in 1975 (Table 35) The number of fishermen on these vessels declined by 19 percent from 1887 to 1533.

Total landings of all fish species by these vessels declined by 24 percent from 227 to 172 million pounds. However the prices of the principal species increased considerably during the period. The ex-vessel value of this reduced level of landings was approximately $43 million in 1975 compared to $27 million in 1970, an increase of about 60 percent.

While the productivity of the remaining units declined, the increase in prices resulted in the deflated value of the catch per fisherman increasing by 39 percent and the deflated value of the catch per vessel increasing by 20 percent compared to 1970. Regretably there are no data available to determine the performance of these units in terms of profits, return on sales, return on assets, fishermen's real earnings, etc.

Table 35- Massachusetts fish otter trawl vessel and boat fishery--1975.

Catch quantity, pounds	
haddock	14,219,600
other catch	158,256,400
total	172,476,000
Catch value, current dollars	
haddock	4,591,267
other catch	38,782,832
total	43,374,099
Fishermen	
on vessels	1,533
on boats & shore	
regular	32
casual	—
total	1,565
Vessels	
numbers	315
tonnage	23,395
average tonnage	74
Boats, motor	17
Gear (trawls)	332
Productivity (pounds)	
catch per man	110,208
catch per craft	519,506
catch per trawl	519,506
Deflated value of catch, dollars	
per man	17,214
per craft	81,146

Source: NMFS Statistics and Market News Division

Note: Catch and deflated value of catch per man are for full-time fishermen equivalents (the sum of vessel fisherman, regular boat and shore fishermen, and one-half casual boat and shore fisherman)

II.1.d.(4)(b) Species Trends:

HADDOCK

Haddock landings in New England continued to decline from 21 million pounds worth $5.6 million in 1971 to 8 million pounds worth $3.0 million in 1974 (Table 36) However, New England landings in 1975 increased to 16.2 million pounds valued at $5.3 million. Catch restrictions on haddock were in place during most of this period due to the condition of the haddock stocks.

COD

Landings of cod in New England remained above the 50 million pound mark during most of the period (Table 37) By 1975 the value of the cod catch was approximately 2½ times greater than the value of the haddock catch.

YELLOWTAIL FLOUNDER

During the 1971 to 1975 period, yellowtail landings peaked at 64 million pounds in 1972 (Table 38) By 1975, they had declined by about 35 percent to 41 million pounds. A significant price increase resulted in the value of this reduced catch being worth about $14.7 million, the most for the entire period and was the largest value for any finfish in New England.

While the data in Tables 36, 37, and 38 are for all catching methods and the data in Table 35 are for otter trawls alone, it is clear that cod, haddock and yellowtail flounder constitute the resource base for the groundfish fleet. In 1972 for example, the value of the catch of these three species alone comprised about two-thirds of the total value of the catch for Massachusetts otter trawls. In 1973, these species accounted for approximately 60 percent of the total value of the Massachusetts otter trawl catch.

Table 36. New England haddock landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000
1971	321	180	19	5	20,345	5,324	358	98	-	-	21,543	5,601
1972	491	165	15	8	10,931	4,018	314	112	-	-	11,751	4,303
1973	352	124	18	10	7,707	2,940	231	85	-	-	8,308	3,159
1974	229	87	40	15	7,684	2,838	272	83	-	-	8,225	3,023
1975	776	276	50	16	14,728	4,832	656	174	-	-	16,210	5,298

Table 37. New England cod landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs.	$1000
1971	4,379	335	201	30	46,554	5,729	2,309	296	180	23	53,623	6,413
1973	4,432	437	254	40	39,226	6,947	2,396	461	35	7	46,343	7,872
1973	4,035	498	472	85	42,411	7,847	2,976	491	106	18	50,000	8,939
1974	4,003	542			49,582	9,690	3,245	655			(56,830)	(10,887)
1975	5,596	911			46,385	11,188	1,889	475			(53,870)	(12,574)

Table 38. New England yellowtail flounder landings

	MAINE		NEW HAMPSHIRE		MASSACHUSETTS		RHODE ISLAND		CONNECTICUT		TOTAL	
	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000	1000 lbs	$1000
1971	87	9	53	6	41,940	6,889	11,810	1,499	474	47	54,634	8,451
1972	276	47	65	12	43,647	8,796	19,960	2,891	---	---	63,948	11,746
1973	120	23	4	1	40,338	9,186	18,882	3,593	268	40	59,612	12,843
1974	197	45	3	1	38,826	10,215	13,936	3,144	9	2	52,971	13,407
1975	324	104	4	2	33,221	11,971	7,938	2,622	7	2	41,494	14,701

II.1.e. Types and Number of Vessels Employed.

II.1.e.(1) Cod.

Table 39 gives the number of vessels in 1965, 1970, and 1975 which landed some cod and the number whose catch for the year consisted of 50 percent or more cod (by weight) There has been a consistent increase in the numbers of vessels landing some cod from 1965–1975 as well as an increase in the number of vessels whose total catch for the year was 50 percent or more cod.

Table 40 contains data on the number of trips (by all gears) days fished, and catch per day fished for those New England trips where 50 percent or more of the trip catch consisted of cod for the years 1965, 1970, and 1975. These data emphasize even more the general shift toward a directed fishery for cod in the ground-fish fishery. Between 1965 and and 1975 the number of trips directed toward cod doubled and the number of days fished increased 3-fold.

The number of recreational fishermen seeking cod is unknown but recent NMFS statistics indicate that there are approximately 10.8 million people participating in marine recreational fisheries (including shellfishing) from the states of Maine through Virginia, West Virginia, Vermont, and Washington, D.C., suggesting that recreational fisheries may be of considerable importance in the total harvest of cod, particularly for those components of the cod stocks most closely related to nearshore areas and in the mid-Atlantic winter fishery.

Table. 39 Number of vessels in the cod fishery, 1965, 1970, and 1975.

Year	Vessels landing some cod	Vessels whose total catch was 50% or more of cod
1965	492	16
1970	549	41
1975	595	47

Table. 40 Performance data on vessel trips where landings consisted of 50 percent or more cod.

Year	Trips	Days fished	Catch/day fished (1,000 lb.)
1965	979	2253.5	2.96
1970	1661	4106.5	4.62
1975	1987	6272.6	3.57

Foreign Vessels—In 1961, Soviet fleets made their appearance on Georges Bank, 150 miles east of Boston. The maximum number of vessels observed on the grounds at any one time was around 50, but for the year the Soviet expedition included 100 individual vessels. In subsequent years, 300–400 different Soviet vessels fished seasonally on Georges Bank, primarily for herring. By 1965, during peak fishing seasons (summer and fall), 200–250 Soviet vessels were fishing for herring, red and silver hake, haddock, and cod on Georges Bank and in southern New England. Throughout that year more than 450 individual vessels were sighted. Soviet fleets were joined each year, beginning in 1966 and continuing into the early 1970's, by numbers of vessels from Poland and Romania, followed closely by vessels from East and West Germany and Japan. Other nations followed, including Bulgaria, Spain, France, Greece, and Italy. Recently, nations such as Cuba, South Korea, and Ireland have been represented. During this period, 900–1000 foreign vessels annually fished in international waters off the U.S. east coast from the southern tip of Nova Scotia to Cape Hatteras. Depending on the season, 250 to 300 vessels were observed at one time or another, whether it be off North Carolina-Virginia in winter or on Georges Bank during the summer.

Table 41 Numbers of foreign fishing vessels sighted in SA 5 and 6 by type, 1971-1975[a]

Year	Type vessel	Country								
		USSR	Poland	GDR	FRG	Japan	Spain	Bulgaria	Romania	Italy
1971	Stern	186	40	28	26	17	4	11	8	1
	Side	359	57	24		18	34			1
	Support	105	20	8	7			2		
	Total	650	117	60	33	35	38	13	8	2
1972	Stern	211	50	33	18	19	7	11	7	4
	Side	379	59	26		24	47			1
	Support	90	14	9	4	1		2	1	
	Total	680	123	68	22	44	54	13	8	5
1973	Stern	207	50	32	19	18	36	11	7	14
	Side	234	19	29		22	25/52			2
	Support	67	18	7		1		2	1	
	Total	508	87	68	19	41	113	13	8	16
1974	Stern	218	46	23	17	21	57	13	4	11
	Side	144	14	29		30	28/58			
	Support	81	16	7	4	2		4	2	
	Total	443	76	59	21	53	143	17	6	11
1975	Stern	252	37	22	18	15	38	16	2	8
	Side	145	12	20		6	12/70			
	Support	81	16	5	5	5	-	3		
	Total	478	65	47	23	26	120	19	2	8

[a]In addition, small numbers (<10) of stern trawlers belong to France, Cuba, South Korea, Ireland, and Greece have been observed in SA 5 and 6 in recent years.

Between 1971 and 1975 the annual number of foreign vessels declined from 956 to under 800 (Table 41) It can reasonably be assumed that foreign fleets have dwindled even more during 1976 in response to greatly reduced fish stocks and increasingly more stringent catch restrictions, such as low quotas, closed areas, etc. Despite these restrictions, at the peak seasons (winter and spring, 1975–1976) 200–250 vessels were observed at one time on the fishing grounds. However, during other times of the year activity has been at its lowest level in many years.

It is difficult to make an accurate evaluation of actual numbers and types of foreign vessels involved in the yellowtail flounder fishery, as such evaluations must be based on surveillance data collected for approximate numbers of vessels fishing a variety of species. Foreign fishing for yellowtail flounder peaked in 1969 when 33 percent of the total catch was taken by foreign vessels. However, since 1972, foreign fleets have caught only about 2 percent of the total yellowtail flounder catch in Subarea 5 and Statistical Area 6. Table 42 indicates the relative amount of fishing pressure exerted by foreign nationals and the U.S. (note that these data do not take fishing power into account) for 1974. Note that almost all of the fishing pressure exerted on flounder was by the United States.

II.1.e(2) Yellowtail Flounder.

Domestic.—Table 43 contains data on the number of U.S. vessels which recorded some yellowtail flounder landings in 1965, 1970, and 1975, and those vessels whose yellowtail flounder catch was 50 percent or more of their total catch.

Foreign Vessels—See II.1.e.(1) Cod for details.

Table 42 1974 days fished as reported to ICNAF

Country	Cod	Haddock	Redfish	Silver hake	Red hake	Pollock	Flounder	Ground-fish	Herring	Mackerel	Pelagic	Other fish	Squid	Total
Bulgaria				55						712				767
Canada	310	91	13			553		148	0				9	1,124
Denmark														
France	3								65					68
FRG									616					616
Iceland														
Italy[a]													0	
Japan								3	147		352		1,902	2,640
Norway														
Poland	6								1,241	3,500		5	423	5,175
Portugal														
Romania									178	345				523
Spain	415												2,378	2,797
USSR				6,804	2,412		18	304	3,012	4,045		1,317	435	18,347
UK		11												11
USA	5,898	77	770	924	106	1,145	13,365	7,051	222	641	674	1,276	1,805	- 33,756
GDR	2								936	1,392	8	458		2,797
Other														

[a]No reporting of effort units.

TABLE 43.—*Number of vessels in the yellowtail flounder fishery*

	Number of vessels landing some yellowtail flounder	Number of vessels whose total catch was 50 pct or more yellowtail flounder
Year:		
1965	426	133
1970	397	132
1975	501	128

II.1.e.(3) Haddock.

Domestic—Prior to the entrance of Canada and the U.S.S.R. to the fishery, the bulk of the U.S. catch was taken by otter trawlers ranging in size from 51–150 gross registered tons, which spent 5 to 7 days at sea. Smaller amounts were also taken by vessels of from 0–50 tons making trips of shorter duration in inshore waters (off Cape Cod, long-liners have been of local importance) In recent years, the number of larger vessels in the U.S. fishery has declined steadily

Table 44 shows the number of U.S. vessels in 1965, 1970, and 1975 which landed some haddock and also gives the numbers for 1965 and 1970 whose catch for the year was composed of 50 percent or more of haddock (by weight) It can be seen that during this ten year period there was a drastic decline in the number of U.S. vessels involved in directed fisheries for this species. Performance data for vessels pursuing directed fisheries for haddock (1965 and 1970) reveal essentially the same trend (Table 45)

Foreign Vessels—See II.1.e.(1) Cod for details.

Table 44 Number of vessels in the haddock fishery

Year	Vessels landing some haddock	Vessels whose total catch was 50% or more of haddock
1965	443	111
1970	437	11
1975	425	-[1]

[1]Under incidental catch limitation, vessels prohibited from directed fishery for haddock.

Table 45. Performance data for trips in which the total catch consisted of 50% or more of haddock.[1]

Year	Trips	Days fished	Catch/Day (000 lbs)
1965	3,676	11,387	8.69
1970	538	1,411	6.61

[1]Directed fishing was not permitted for this species in 1975.

II.1.f. Types of Gear.

The traditional U.S. fisheries for these species were prosecuted primarily by means of otter trawls, and the bulk of the catch is still taken by otter trawling. In addition, small amounts of these species are taken in the course of line trawling, hand lining, and gillnetting.

The U.S. recreational fisheries for these species employ hook and line gear fished by anglers from shore, small boats, and chartered party boats.

II. 1.g. Historical Impacts of Foreign Fishing on Domestic Fishery.

II.1.g(1) Cod.

U.S. and foreign landings of cod for the period 1960–1975 are given in Table 46 for Division 5Y and 5Z. For the Gulf of Maine stock (Division 5Y), competition has been minimal with foreign landings exceeding five percent of the total only once (1966) since 1960. For the Division 5Z stock, however, major shifts in the distribution of the total catch are evident throughout the 16 year period. With the advent of the distant-water fleets in the early 1960's, the percentage contribution of the U.S. domestic fishery decreased steadily from virtually 100% (1960) to a low of only 22 percent (1966) Following 1966, the U.S. portion of the total landings began to increase again reaching 64 percent by 1975. During this period total landings increased from 10,400 tons (1960) to 52,800 tons (1966) and then decreased to 24,000 tons (1975). In the area south of Division 5Z the reported landings of cod are a consequence of by-catch in other directed groundfish fisheries.

Table 46 USA, foreign, and total landings (metric tons) for the Division 5Y and 5Z cod stocks expressed as relative percentages of the total catch, 1960-1975.

Year	USA Landings	USA Percent of total	Foreign Landings	Foreign Percent of total	Total
		Division 5Y			
1960	3,400	99	29	1	3,429
1961	3,200	99	18	1	3,218
1962	3,000	97	83	3	3,083
1963	2,600	96	103	4	2,703
1964	3,200	99	25	1	3,225
1965	3,780	96	148	4	3,928
1966	4,008	91	384	9	4,392
1967	5,676	95	297	5	5,973
1968	6,360	99	61	1	6,421
1969	8,157	96	327	4	8,484
1970	7,812	95	449	5	8,261
1971	7,380	96	282	4	7,662
1972	6,776	98	141	2	6,917
1973	6,069	99	77	1	6,146
1974	7,639	98	125	2	7,764
1975[1]	9,252	99	110	1	9,362
		Division 5Z			
1960	10,390	100	20	0	10,410
1961	13,996	98	280	2	14,276
1962	15,231	66	7,850	34	23,081
1963	13,903	52	13,050	48	26,953
1964	12,324	49	12,841	51	25,165
1965	11,410	30	26,923	70	38,333
1966	11,794	22	41,069	78	52,863
1967	12,742	35	23,592	65	36,334
1968	14,967	35	27,790	65	42,757
1969	16,356	44	21,068	56	37,424
1970	14,535	58	10,674	42	25,209
1971	15,795	57	11,900	43	27,695
1972	13,140	53	11,490	47	24,630
1973	15,933	56	12,607	44	28,540
1974	17,870	67	8,822	33	26,692
1975[1]	15,329	64	8,667	36	23,996

[1]Provisional

II.1.g.(2) Yellowtail Flounder.

U.S. and foreign landing data for yellowtail flounder in Subarea 5 and Statistical Area 6 are given in Table 47. Total U.S. landings have varied widely since 1935. Competition between the U.S. and foreign fishing fleets (particularly of the U.S.S.R.) for yellowtail flounder was most intensive during 1969 on the Southern New England ground. Following the highest catches of yellowtail flounder on the Southern New England ground since 1942, catches since 1969 have declined sharply. Catches of yellowtail flounder on Georges Bank have remained relatively steady in recent years although some decline has occurred.

II.1.g.(3) Haddock.

U.S. and foreign landing data for haddock in Subarea 5 and Statistical Area 6 are given in Table 48. It can be seen that in the mid-1960's the U.S. share of the total catch declined from approximately 100 percent in 1960 to 37 percent in 1965;

since that year, the relative percentage has increased although the overall volume of landings has declined.

Table 49 shows the magnitude of Canadian and U.S.S.R. landings during the mid-1960's. There can be little doubt that greatly increased levels of fishing by foreign nationals at this time resulted in a significant reduction in stock abundance and in long-term productivity and yield.

Table 47 Yellowtail flounder catch. Catches for SA5 includes discards.

	SA5 West of 69°W			SA6		SA5 East of 69°W		
	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3	Domestic Catch m.t.x10-3	Foreign Catch m.t.x10-3	Domestic Catch m.t.x10-3	Total Days Fished	Foreign Catch m.t.x10-3
1935	8.9					0.4		
6	10.0					0.4		
7	11.3					0.4		
8	11.5					0.4		
9	14.1					0.5		
40	21.1					0.8		
1	28.7					1.2		
2	40.3					2.1		
3	27.0	6280				1.7	200	
4	16.9	5140				2.2	220	
5	16.2	3470				1.9	280	
6	16.8	4260				1.2	230	
7	18.4	5340				3.1	480	
8	14.8	5610				7.7	1120	
9	8.4	4080				9.8	2490	
50	8.5	4180				5.3	1640	
1	5.0	2790				5.8	1610	
2	5.4	3200				5.0	1600	
3	4.1	2410				3.9	1240	
4	3.7	2240				3.9	1380	
5	5.1	2700				3.9	1230	
6	7.3	3950				2.1	790	
7	11.5	4060				3.1	820	
8	15.2	4770				6.1	1400	
9	13.3	5890				5.5	1970	
60	13.5	5720				5.9	2020	
1	19.4	5760				5.7	1820	
2	21.1	5050				10.3	2350	
3	32.3	6470	0.2			16.6	2420	0.1
4	31.4	5800	---	1.8		19.8	3530	---
5	28.4	7310	1.4	2.1		18.4	4680	0.8
6	25.0	9790	0.7	2.2		13.4	5710	0.3
7	25.3	8200	2.8	5.3		13.9	4130	1.4
8	26.7	7650	3.5	3.3		16.4	4660	1.8
9	19.6	11460	17.6	3.9	0.7	18.5	6710	2.4
70	21.6	6913	2.5	4.1	0.1	21.0	6275	0.3
1	14.5	4558	0.3	6.9	0.9	15.0	6142	0.5
2	11.9	5458	3.0	8.8	0.1	15.3	8099	2.2
3	9.3	4954	0.2	1.8	---	16.5	6833	0.3
4	9.3	5325	0.1	4.9	0.2	15.8	8884	1.0
5	5.5	3769	---	0.7	---	14.5	8670	0.1

Table 48 USA and foreign landings (metric tons) for haddock in Subarea 5 and Statistical Area 6 expressed as relative percentages of the total catch 1960 1975[1]

Year	USA Landings	% of Total	Foreign Landings	% of total	Grand Total
1960	45341	99	460	1	45801
1961	51681	100	189	0	51876
1962	54412	92	4702	8	59118
1963	48892	82	10743	18	59635
1964	51895	75	17644	25	69539
1965	57027	37	97698	63	154725
1966	57510	45	69588	55	127098
1967	39659	70	17330	30	56989
1968	28914	65	15616	35	44530
1969	18892	76	6085	24	24977
1970	9874	77	2990	23	12864
1971	8508	70	3668	30	12176
1972	4779	72	1891	28	6670
1973	3269	56	2603	44	5892
1974	3018	59	2103	41	5121
1975	5168	78	1439	22	6607

Table 49 Commercial landings of haddock (metric tons) from Subarea 5 and Statistical Area 6 by country 1960 1975

Year	Country								
	Canada	Poland	Romania	Spain	UK	USSR	USA	Other[1]	Total
					Div. 5Y[2]				
1960	383	-	-		-		4,541	-	4,924
1961	56		-	-		-	5,297		5,353
1962	107		-	-	-	-	5,003		5,110
1963	3	-	-	-	-	44	4,742	-	4,789
1964	70	-		-	-		5,383	-	5,453
1965	159		-	-	-		4,204		4,363
1966	1,125		-	-	-		4,579		5,704
1967	589		-	-	-	-	4,907	-	5,496
1968	120		-	-	-		3,437	-	3,557
1969	59			230			2,423	-	2,712
1970	38	-	-	63	-	-	1,457	-	1,558
1971	85		-	26		-	1,194	1	1,306
1972	23	-	-	-	-	4	909	-	936
1973	49		-				509	-	558
1974	198		-	-	9	-	622	-	829
1975[4]	78	-	-	-	-	-	1,183	-	1,261
					Subdiv. 5Ze[2]				
1960[3]	77			-	-	-	40,800[5]		40,877
1961[3]	133	-	-	-	-		46,384[5]	-	46,517
1962[3]	3,461	-	-	-	-	1,134	49,409[5]	-	54,004
1963[3]	8,379	-	-	-	-	2,317	44,150[5]	-	54,846
1964[3]	11,625	-	-	2	464	5,483	46,512	-	64,086
1965[3]	14,889	28	-	10	-	81,882	52,823	730	150,362
1966[3]	18,292	29	-	1,111	29	48,409	52,918	486	121,274
1967[3]	13,040	-	12	1,355	3	2,316	34,728	4	51,458
1968	9,292	1,115	-	2,845	-	1,308	25,197	29	39,816
1969	3,990	458	-	1,201	-	51	16,443	4	22,147
1970	1 978	15	-	782	-	98	8,400	1	11,274
1971	1,630	1	225	1 240	-	292	7,301	16	10,705
1972	609	1	14	1,098	-	126	3,866	5	5,719
1973	1,563	-	-	386	-	574	2,776	3	5,302
1974	462	-	-	764	426	97	2,396	-	4,145
1975[4]	1,353	-	-	-	-	8	3,985	-	5,346

1 Includes landings for Bulgaria, France, FRG, GDR, Japan and non members
2 From ICNAF statistical bulletins 10-24.
3 Landings not allocated by subdivision (5Ze or 5Zw).
4 From provisional ICNAF statistics for 1976 (incomplete)
5 Subarea 5 UK landings were added into 5Z
6 No statistical area 6 landings data are available prior to 1966, but haddock landings for the area were apparently negligible

II.2. Status of the Fishery Stocks.

II.2.a. Cod.

II.2.a.(1) Distribution of Exploited Stocks.

Cod are distributed generally throughout the entire region of their involvement off the U.S. coast showing a more southerly extension in distribution and a tendency to inhabit shoaler waters of the area during the spring months of the year. As the waters warm during the spring and summer and cod move toward deeper waters. For the stock in Division 5Z the cooler waters of the Great South Channel provide a favorable habitat while the stock in the Gulf of Maine are found between the 10 and 140 meter contours, summer or winter. Differences in growth rates between these two stocks of cod and the results of tagging studies (Wise, 1958; 1962) would suggest that the amount of intermingling is minimal. However, the extent to which these are nearshore localized cod stocks which support nearshore recreational fisheries with minimal interaction with the more offshore cod stocks is unknown.

II.2.a.(2) Abundance of Exploited Stocks.

Equilibrium Yield Curves—Surplus production analyses have been completed only for the Division 5Z cod stock. While they are not considered wholly satisfactory the estimates do indicate the general range of yields that can be expected from this stock. As such, the MSY estimates for the Division 5Z stock range from 32,500 to 34,500 m.t. The TAC for this stock has been set at 35,000 m.t. since 1973. Nominal landings for the Gulf of Maine stock have fluctuated between 2,700 and 14,500 m.t. since 1932. On this basis, a TAC of 10,000 m.t. was established as a provisional estimate of the MSY although the nominal landings for this stock have only averaged 7,100 m.t. over the past 10-year period, 1966–1975. This TAC was reduced to 8,000 m.t. for 1976 based on (1) a decline in the relative abundance of the stock as observed in the U.S. research autumn bottom trawl surveys, (2) the average historical catch levels with the implication of an expanding recreational fishery component on this stock, and (3) estimates of current rates of fishing mortality above those considered to give the maximum yield per recruit.

Yield Per Recruit (YPR)—The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F) For cod the yield per recruit for various combinations of t_c and F (M=0.2) are given in Table 49A. Exploitation of a cohort of cod begins, at present, at about 2 years of age.

TABLE 49A.—*Yield per recruit (kilogram) of cod*

Instantaneous rate of fishing (F)	Age at 1st capture in years with corresponding length (centimeter)							
	2 (39.5)	3 (52)	4 (62.5)	5 (72.5)	6 (81)	8 (88.5)	8 (95.5)	9 (101.5)
0.1	2.6	2.8	3.0	3.1	3.1	3.1	3.0	2.8
.2	2.7	3.1	3.5	3.8	4.0	4.1	4.2	4.1
.3	2.3	2.9	3.4	3.9	4.2	4.5	4.6	4.6
.4	2.0	2.6	3.2	3.8	4.2	4.5	4.8	4.9
.5	1.7	2.4	3.0	3.6	4.1	4.5	4.8	5.0
.6	1.5	2.2	2.9	3.5	4.0	4.5	4.8	5.0
.7	1.4	2.0	2.7	3.4	4.0	4.4	4.8	5.0
.8	1.3	1.9	2.6	3.3	3.9	4.4	4.8	5.0
.9	1.2	1.8	2.5	3.2	3.8	4.3	4.7	5.0
1.0	1.1	1.7	2.5	3.2	3.8	4.3	4.7	5.0
1.5	.9	1.5	2.2	3.0	3.6	4.2	4.6	4.9

Clearly, for cod, an increase in age of first exploitation will result in an increase in YPR. This would also allow more fish to reach the age of first spawning and possibly improving future recruitment.

McCracken (1963; ICNAF Spec. Publ. No. 5) found a mesh selection factor for cod ranging from 3.4–3.9. The 50 percent retention length of a net is calculated by multiplying the mesh selection factor times the mesh of the net being considered. Therefore the range of mesh sizes that are associated with various 50 percent retention length for cod were estimated as follows:

50 percent retention	*Range of meshes*
30 cm	77 mm to 88 mm.
40 cm	103 mm to 118 mm.
50 cm	128 mm to 147 mm.
60 cm	154 mm to 176 mm.
70 cm	180 mm to 206 mm.
80 cm	205 mm to 235 mm.

Most of the experiments reported by McCracken used net with a mesh of less than 130 mm, therefore the 50 percent retention estimates for larger mesh needs should be viewed with caution.

Cohort Analysis, Stock Recruitment Relationship, and Related Studies—Detailed cohort and stock recruitment relationship analyses are not currently available for these cod stocks. Nor have the recreational catches of the cod been explicitly included in the assessment analyses, largely because existing estimates are available for only the few years in which special angler surveys were conducted.

II.2.a.(3) Current Fishing Status.

An update of the survey data for the Gulf of Maine stock suggests that the stock has stabilized since 1973. Current estimates of fishing mortality suggest that the average commercial catch of 7,400 m.t. in 1970–74 generated an average F of 0.48. If recruitment remains stable, fishing at F_{max}=0.30 would result in a catch of approximately 5,000 m.t. and fishing at $F_{0.1}$=0.18 would produce a catch of about 3,200 m.t.

For the division 5Z—Area 6 stock, catch data from U.S. autumn bottom trawl surveys indicate a stable level of abundance since 1963, with good recruitment since 1970. A strong 1971 year-class became fully recruited to the fishery by 1974 and the 1975 year-class appears to be about equal in size to that of 1971. Although an analytical assessment (virtual population analysis) has not yet been completed for the stock, preliminary analyses suggest that the very high catches in the late 1960's may have generated F-values in the range of 0.55 and 0.65, which are considerably above the calculated value of F_{max}=0.3, with M=0.2. Catches averaging about 26,500 m.t. during 1970–74 generated F-values averaging 0.36.

If recruitment remains stable, fishing at a level associated with F_{max} would result in a catch of about 24,000 m.t. If fishing is conducted at $F_{0.1}$=0.18, the corresponding catch would be approximately 15,000 m.t.

II.2.b. Yellowtail Flounder.

II.2.b.(1) Abundance of Exploited Stocks.

Yellowtail flounder in Subarea 5 (west of 69°W) and Statistical Area 6—Three yellowtail populations are located in this management area. The Cape Cod and the Southern New England stocks have been under a collective TAC regulation since 1971 and the Statistical Area 6 stock has been included since 1975. The provisional nominal catch from all three stocks was slightly less than 6,000 m.t. in 1975.

i. Cape Cod Stock. The 1975 catch was about 2,000 m.t. which is similar to the long-term average. This long-term average is the best current estimate of MSY However, catch rates of U.S. commercial vessels declined from 1.9 tons per day in 1974 to 1.6 tons per day in 1975, indicating a possible decrease in stock size.

ii. Southern New England Stock. Although TAC regulations greatly decreased total catches since 1970, U.S. commercial fishery catch rates continued to decline during the period. Abundance indices (Brown and Hennemuth 1971a) from autumn surveys indicate a drastic decrease (90 percent since 1969) in pre-recruits (age I) with the catch per tow in 1974 being among the lowest values observed during the entire series of years for which data are available (Table 50) Assuming that the 1976 pre-recruit index is equal to that for 1975, the stock size index will have decreased by about 80% between 1970 and 1977, and it is obvious that the current stock is extremely low. The catch per day fished by U.S. vessels has declined from well over 3.0 tons in each year during 1957–72 to 1.9 tons in 1974 and to 1.4 tons in 1975.

iii. Statistical Area 6 stock. Abundance indices indicate a 90% decrease in stock size between 1970 and 1975 (Table 50) If the 1976 year-class is assumed to be about the same size as that of 1975, the stock size in 1977 is projected to be extremely low in contrast to earlier levels.

Yellowtail flounder in Subarea 5 (east of 69°W)—Provisional statistics indicate a nominal catch of 14,500 m.t. in 1975, in contrast with 16,800 m.t. in 1974. Stock abundance, as measured by autumn bottom trawl surveys and by catch rates of U.S. commercial vessels, seemed to stabilize after 1971–73 with a total allowable catch of 16,000 m.t. The catch per day fished was 1.7 tons in 1975 and 2.0 tons in 1974 in contrast to an average of 2.6 tons per day in the 1970-73 period. The bottom trawl survey indices in 1974–75 averaged 8.8, compared with 14.5 for 1970–73. Abundance indices of age I fish, estimated from the autumn bottom trawl surveys in terms of the stratified mean number caught per tow, are as follows:

Table 50 Catch-per tow (age I+) of pre-recruits and associated stock abundance indices for yellowtail in southern New England and Statistical Area 6 from USA autumn surveys.

Year	Southern New England		Statistical Area 6	
	No. per tow (age I+)	Abundance index	No. per tow (age I+)	Abundance index
1963	16.3		11.1	
1964	18.6		5.3	
1965	11.5		19.2	
1966	35.5		14.2	
1967	20.0	102.5	12.5	64.4
1968	10.0	119.2	11.6	67.3
1969	12.8	92.6	0.6	59.0
1970	7.3	71.9	1.9	36.8
1971	6.3	53.6	11.0	11.7
1972	4.3	40.0	0.6	22.4
1973	1.9	30.8	0.7	21.6
1974	1.1	20.1	0.04	7.5
1975	1.7	11.9	0.46	2.7
1976		8.1		1.2
1977		7.8		1.6

Year-class	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Number per tow	11.60	2.64	1.29	2.76	6.06	10.69	7.64	4.73	3.82	2.42	2.71	3.50	4.65
Log. (number per tow plus 1)	1.774	.760	.556	1.344	1.472	1.451	1.322	1.074	.970	.641	.670	.839	.617

These data indicate that the year-classes which will support the fishery in 1976–77 are less abundant than those which supported the fishery in 1970–73. Age compositions of 1975 catches indicate a large contribution of age II fish, although survey data did not show the increased abundance of this year-class. In view of the abundance of this age-group in the catches, it can be assumed that fishing mortality on it approximately doubled. If higher yields are desired from this fishery, the fishing mortality on 2-year-old fish must be reduced because yellowtail flounder double their weight between 2 and 3 years of age.

Equilibrium Yield Curves—Equilibrium yield curves were estimated by Brown and Hennemuth (1971b) using a generalized production model (Pella and Tomlinson 1969) Although the generalized production model allows skewed equilibrium yield curves, the symmetric logistic model was found to best describe the data for yellowtail flounder of the Southern New England grounds. Both symmetric and skewed equilibrium yield curves were calculated for the Georges Bank stock. Equilibrium yield curves have not been estimated for the smaller Cape Cod and Subarea 6 stocks.

The maximum sustainable yield (MSY) for the Southern New England stock was estimated at about 16,000 m.t. at a fishing intensity of 5400 standard days/year. For Georges Bank the estimated MSY figures were 9200 m.t. with 3420 standard days/year and 18,500 m.t. with 6,780 days/year fished for the symmetric and skewed curves, respectively. Data in Table 47 indicate that the catches and number of days fished annually exceeded these levels during the late 1960's and early 1970's. More recently the total MSY for Subarea 5Z west of 69° has been estimated as 16,000 m.t.

There is evidence that production of yellowtail flounder on the Southern New England ground is highly correlated with annual anomalies of temperature (Sissenwine 1974) Because of environmentally-related fluctuations in yellowtail flounder production, management of this species on a year-to-year basis should not be founded on equilibrium yield considerations.

II 2.b.(2) Yield Per Recruit (YPR) The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F) For the yellowtail flounder, the yield per recruit (for a natural mortality rate of 0.2) is given in Table 51 for various combinations of F and t_c. By increasing the age at first capture from 2 years (265 mm) to 2.5 years (302 mm) or to 3.0 years (332 mm) the yield per recruit increases by 8 to 18 percent or 12 to 32 percent respectively for F between 0.5 and 1.5. Increasing the age at first capture will also increase the size of the spawning stock and may favorably affect future recruitment.

Table 51 Yield per 1000 recruits in kg for M = 0.2.

Instantaneous rate of fishing (F)	Minimum age at first capture in years (length in mm in ( ))					
	1.75 (245)	2.00 (265)	2.25 (284)	2.50 (302)	2.75 (318)	3.00 (332)
0.5	230	240	248	258	263	268
0.6	256	273	288	300	309	317
0.7	250	269	285	299	311	320
0.8	244	264	282	297	310	321
0.9	238	259	278	294	308	320
1.0	232	254	274	291	306	319
1.1	227	250	270	288	304	317
1.2	222	245	267	286	302	316
1.3	218	242	263	283	300	314
1.4	214	238	260	280	298	313
1.5	210	235	258	278	296	311

YPR analysis indicates that there is considerable advantage in increasing t_c. Maximum yield per recruit occurs with $F(F_{max})$ between 0.6 and 0.8, but F has often exceeded 1.0.

If the age of entry is assumed to be 2 years (265 mm) the age at which yellowtail flounder begin to be captured in large amounts at present, and the level of F set at 1.0, then raising the age at entry to 3 (332 mm) and reducing F to 0.8 results in a 26 percent gain. If the present F is 1.1 the gain would be 28 percent if F is 1.2, 31 percent and if F is 1.3, 33 percent. The corresponding gains from a reduction in effort alone would be 4, 6, 8, and 9 percent in catch.

Increasing the age of entry to 2½ years would reduce discards by about 25 percent under the current culling practice. An increase to age II would reduce discards by about 45 percent.

It is estimated from the curves given by Hennemuth and Lux (1970) that 129 mm synthetic mesh would retain approximately 66 percent of the 2.5-year-olds and 77 percent of the 3-year-olds relative to presently used 114 mm mesh. The 145 mm mesh would retain 33 percent of the 2.5-year-olds and 50 percent of the 3-year-olds.

Since fishing at F_{max} ignores the need to allow an adequate spawning stock to assure future recruitment to the fishery, $F_{0.1}$ has been proposed as a level of fishing mortality more appropriate as a management goal. $F_{0.1}$ is the level of fishing mortality at which one additional unit of effort results in 10% of the increased YPR that results from the first unit of effort. $F_{0.1}$ usually results in nearly as high a YPR as F_{max} at a considerably lower level of effort with less reduction in stock size. $F_{0.1}$ for yellowtail flounder is 0.4.

Cohort Analysis—Management of yellowtail flounder in Subarea 5+6 has been based on stock abundance estimates from U.S. bottom trawl surveys. Therefore, virtual population analysis (See "cohort analysis" in Ricker, 1975) is not applied routinely to yellowtail flounder data. Brown and Hennemuth (1971) report estimates of population size and fishing mortality rate based on virtual population analysis for the 1958–1962 year-classes.

Stock-Recruitment Relationship—The relationship between spawning stock size and recruitment for yellowtail flounder is unknown. However, it should be noted that the very low spawning stock size has consistently produced poor year-classes in recent years.

II.2.b.(3) Current Fishery Status and Outlook for 1977.

Subarea 5 west of 69° and Statistical Area 6—As indicated above, yellowtail flounder stocks of Subarea 5 west 69° and Statistical Area 6 are severely depressed. At present, almost the entire catch of yellowtail flounder in Subarea 5+6 is taken by domestic fishermen. Fishing in Subarea 5 west of 69° longitude and Subarea 6 is restricted to bycatch only to minimize fishing mortality. Even with this restriction, stock abundance indices for recent years indicate that fishing mortality is higher than 1.0, whereas F_{max} is about 0.7 and $F_{0.1}$ is about 0.4. Because of the depressed conditions of yellowtail flounder stocks in Subarea 5 west of 69° and Statistical Area 6, a total allowable catch of zero is necessary for 1977 (with knowledge that the un-

avoidable catch may approach 4,000 m.t.) if further declines are to be avoided. Even if catch is held to only 4,000 m.t. in 1977, no recovery of the stock is expected without improved recruitment. While recruitment of yellowtail flounder may be strongly related to temperature, further declines in stock could threaten recovery of the fishery when more favorable conditions do occur.

Table 52 Yellowtail in Subarea 5 (east of 69°W) catch and stock size projections, 1975-77

Year	Age	Stock numbers[1]	F	Catch		Residual stock[2]
				Numbers	Weight	
		(10^{-3})		(10^{-3})	(tons)	(10^{-3})
1975	2	40,100	0.4	12,030		
	3	20,900	0.8	10,450		
	4	12,198	0.8	6,099		
	5	4,150	0.8	2,125		
	6	1,060	0.8	530		
	7	542	0.8	271		
	8+	212	0.8	106		
	Total	79,162		31,611		
1976	2	42,000	0.4	12,600	3,037	
	3	21,979	0.8	10,987	4,582	
	4	7,689	0.8	3,845	2,284	
	5	4,487	0.8	2,243	1,671	
	6	1,527	0.8	763	658	
	7	392	0.8	196	188	
	8+	277	0.8	139	140	(age 3 and older)
	Total	78,341		30,773	12,568	
1977	2	42,000	0.4	12,600	3,034	-
	3	23,100	0.8	11,505	4,797	23,100
	4	8,084	0.8	4,042	2,400	8,489
	5	2,829	0.8	1,415	1,054	2,974
	6	1,660	0.8	830	716	1,040
	7	565	0.8	282	270	611
	8+	248	0.8	186	187	301
	Total	88,486		30,860	12,458	36,515
1977	2	42,000	0.2	7,140	1,721	-
	3	23,100	0.4	6,576	2,742	28,153
	4	8,084	0.4	2,425	1,440	12,678
	5	2,829	0.4	849	504	4,610
	6	1,660	0.4	498	430	1,552
	7	565	0.4	170	163	911
	8+	248	0.4	166	167	446
	Total	88,486		17,824	7,176	42,050

[1]Stock numbers refer to beginning of the indicated year
[2]Residual stock (age 3 and older) at the start of the following year

Subarea 5 east of 60°—As indicated above, indices of abundance for yellowtail flounder of Subarea 5 of 69° have declined substantially since 1970–1973.

Utilizing available data on age composition and estimated mortality for 1975, catch and stock size projections were made for 1976 and 1977 (Table 54). Using F=0.8 for fish age III and older in the 1975 fishery and F=0.4 for age II fish (based on fishing mortality for 1964–72 as calculated by Penttila and Brown (1976)), stock sizes in 1975 and 1976 were estimated. Using the same F-values for 1976, a catch of 12,500 m.t. is predicted. This catch probably approximates that which will actually be taken in 1976, based on the experience of the 1975 fishery and provisional figures for the 1976 catch. Increased fishing effort directed towards younger fish in 1976 would result in higher catch. The level of recruitment assumed for 1976 and 1977 (42 million fish at age II) is equal to the lowest level since 1962, as estimated from preliminary virtual population analysis and indicated by recent trends in survey indices.

If fishing is conducted at the level of F_{max} in 1977 for a predicted yield of 12,400 m.t., the stock size will be maintained at about the relatively low level existing in 1975 and 1976. Fishing at $F_{0.1}$=0.4 for a projected catch of 7,000 m.t. would result in increasing the stock size by about 10 percent. If fishing is continued in future years at the $F_{0.1}$ level and recruitment remains at about the current level, annual yields should increase to about 12,000 m.t. in 5–6 years and the stock size (age III fish and older) should increase to about 61 million fish, a level similar to that which prevailed in the 1962–73 period.

II.2.c Haddock.

II.2.c.(1) Distribution of Exploited Stocks.

As pointed out under *Biology of the Regulated Species* above, haddock on Georges Bank (former ICNAF Subdivision 5Ze) appear to be relatively sedentary, although some degree of interchange may occur with populations to the west. However, seasonal shifts in distribution in response to temperature changes have been documented; further, spawning aggregations also form on the northeastern portion of the Bank, and (at least in some years) in the Nantucket Shoals—Great South Channel area as well.

The major assessments in recent years have been made principally on the Georges Bank stock.

II.2.c.(2) Abundance and Current Status.

Prior to 1965, this stock was in a relatively stable condition; surplus production model studies (Hennemuth 1969) indicate an MSY of 47,000 m.t. based on an average stock size estimate of 145×10^3 fish during the 1935–1960 period.

Both commercial catch/effort data and U.S. autumn bottom trawl survey data, however, indicate a pronounced decline in abundance since 1967. Recruitment has been generally poor. The 1972 and 1975 year-classes were the strongest since 1967, although strength of the 1975 year-class is based only on one research survey and additional data will be required for a more definitive estimate. Both stock size estimates (Table 53) and survey data indicate a decline in abundance in the late 1960's and early 1970's followed by an increase.

Projections for 1976 and 1977 (Clark, 1976) indicate that, if recruitment con-

tinues at the average level observed during 1972–75 (approximately 15 million fish) maintaining the existing TAC level of 6,000 m.t. would lead to a stabilization of stock size in the late 1970's at only about one-half of the pre-1960, level, while an increased TAC could lead to a substantial reduction in abundance. Even with better than average recruitment, by-catches would be expected to increase, thereby delaying somewhat the projected improvement in stock size. The problem is further complicated by increased growth rates in recent years (Clark, 1975) thus indicating recruitment at a progressively earlier age.

Table 53. Stock abundance, removals and recruitment estimates for Georges Bank haddock, 1968–77

	Yearly estimates in millions of fish										
	1935–60[1]	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977
Stock size (age 2+)	145	70[2]	36	21	24	16	27	55	50	48	66
Removals											
-total	63	35	16	8	9	5	8	12	12	12	14
-fishing[3]	41	25	11	5	5	2	3	3	3	4	4
-natural[3]	22	10	5	3	4	3	5	9	9	8	10
Recruits (age 2)	54	15	1	1	11	1	16	36	7	10	30

[1] Average of yearly estimates during this period.

[2] Estimated assuming F = 0.5 and M = 0.2 during 1968.

[3] Values computed on the basis of mean weight at age in USA data.

Yield Per Recruit (YPR)—The yield from a cohort of fish of the same age (year-class) reflects the age at which exploitation of the cohort is initiated (t_c) and the instantaneous fishing mortality rate (F) For SA 5Z haddock, the yield per recruit for a natural mortality rate of 0.2 is given in Table 53A for various combinations of F and t_c. YPR was calculated using a modification of Ricker's piecewise integration method where weight at age is estimated by the average weight of individuals in the catch for 1970–1974 for fish greater than 2 years old and from Grosslein (1962; ICNAF Redbook Part III, p. 124) and Schuck (1951. Fish. Bull. 66: 151–176) for age I and II fish.

The results presented in Table 53A must be considered preliminary at this time because the validity of the growth assumptions on which these results are based have not yet been tested. The results do indicate a substantial benefit when fishing mortality is removed from fish less than 50 cm in length. When fishing is limited to fish greater than 50 cm, the maximum yield appears to occur with $F \geq 1.0$, but the increase in yield as F is increased above 0.5 is minor. The reduction in spawning stock size that will accompany high values of F may threaten future recruitment of the fishery.

Graham (1952; ICNAF Second Annual Report, Part 3, p. 23) reported a 50 percent selection point of about 39 cm for haddock using a 114 mm mesh net. Larger mesh nets will be required if fishing mortality to haddock less than 50 cm is to be reduced. Although Graham did not consider nets with a mesh greater than 115 mm, by extrapolating from his results, the 50 percent selection point of a 159 mm mesh net can be crudely estimated as 50 cm. Also extrapolating from Graham (1952), the 50 percent selection point for a 130 mm mesh net (used at present) is estimated as 43 cm.

Table 53A. Yield per recruit (kg) to age 1 for 5Z haddock.

Instantaneous rate of fishing(F)	Age at first capture in years with corresponding length(cm) and weight(kg)							
	1.0 (20,.18)	2.0 (37,.41)	3.0 (52,1.63)	4.0 (56,2.41)	5.0 (60,2.76)	6.0 (63,3.18)	7.0 (66,3.52)	8.0 (69,3.84)
.1	.58	.61	.61	.55	.47	.39	.31	.24
.2	.74	.85	.90	.83	.73	.63	.52	.41
.3	.76	.93	1.04	.99	.89	.77	.55	.53
.4	.72	.95	1.12	1.08	.98	.87	.74	.61
.5	.67	.94	1.15	1.14	1.03	.93	.60	.67
.6	.61	.92	1.18	1.17	1.08	.97	.65	.72
.7	.56	.89	1.19	1.20	1.10	1.00	.88	.75
.8	.52	.87	1.20	1.21	1.12	1.02	.90	.77
.9	.48	.84	1.20	1.23	1.14	1.04	.92	.79
1.0	.45	.81	1.20	1.24	1.15	1.05	.94	.81

Clark (1963; ICNAF Spec Publ No 5, p 24-93) reports the results of several mesh selection experiments for haddock (These are summarized in Table 53B) Clark's results indicate that a mesh in excess of 140 mm is necessary for a 50 percent selection factor greater than 50 cm

II.3 Optimum Yield and US Capacity

Pub L 94-265 defines "optimum" yield as that: "(A) which will provide the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social or ecological factor" (Section 3, Para 18) We must start with the best estimate of maximum sustainable yield from each fishery and then determine optimum yield by applying various social, economic and ecological factors in a somewhat subjective manner The projected US capacity has been determined largely from historical catch data Table 54 provides the results of this analysis, described in detail below The process of determining optimum yield, and its application to fishery management under Pub L 94-265 is shown in Figure 6A

Table 53B Summary of Haddock Escapement Experience

Twine type	Experimental method	Experiment	Twine weight	Mesh size mm	50% point cm	Selection factor
Double manila	Paired tows	Pairtows I	45/4	119	29.5	3 3
" "	Cover	Michigan	50/4	91	29 0	3 3
" "	"	"	50/4	98	31 4	3 2
" "	"	"	50/4	105	32 3	3 1
" "	"	Wisconsin	50/4	109	34 1	3 1
" "	"	"		112	35 7	3 3
" "	"	"		114	36 6	3.2
" "	"	"		121	29 9	3 3
" "	" 20 min tows	Alb. No 49	50/4	113	33 8	3 0
" "	" 40 " "	" " "			35 2	3 2
" "	" 60 " "	" " "			37 2	3 3
" "	" 80 " "	" " "			33 6	3.4
" "	" 40 " "	" " "	45/4	123	36.8	3.0
" "	" 60 " "	" " "			39.7	3.8
" "	" 80 " "	" " "			41.2	3.3
" "	" 40 " "	" " "	75/4	73	24.8	3.4
" "	" 60 " "	" " "			25.2	3.5
" "	" 80 " "	" " "			24.8	3.4
" "	"	Alb No. 51	45 4	107	31 8	3.0
" "	"	" " "	75/4	75	24.5	3.3
" "	"	Alb. No. 52	45/4	113	36.8	3.3
" "	"	Alb. No 59	45/4	140	49.1	3.5
" "	"	" " "	45/4	154	52 8	3.4
" "	"	" " "	45/4	167	54 7	3.3
Single cotton	Paired tows	Pairtows I	120th	144	52.4	3 6
" "	" "	"	120th	106	37.2	3.5
" "	" "	"	120th	111	37.8	3.4
" "	Cover	"	120th	138	49.6	3.6
" "	"	"	120th	114	42.4	3.7
" "	"	"	84th	86	25.8	3.0
" "	"	Priscilla V	72th	73	20.8	2.5
Single dacron (Br.)	Cover	Alb No. 74		127	39 8	2 1

Table 54 - Summary of harvest, yields, U.S. capacity, and foreign surplus (metric tons)

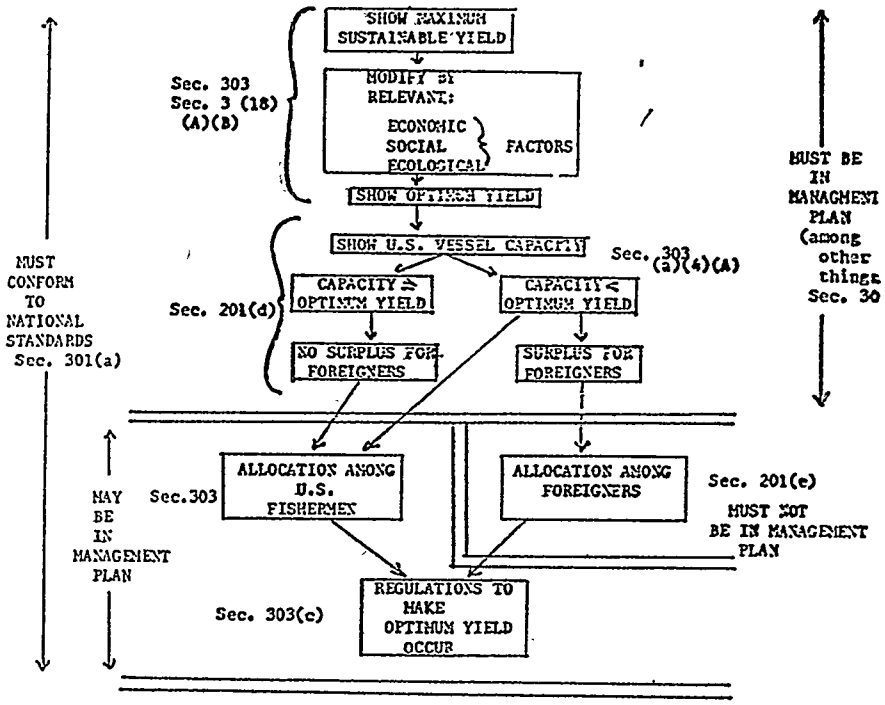
Species	Fishing Area	MSY 1/	O.Y.	U.S. 2/ Capacity	Foreign Surplus (TALFF)	U.S. Recreat. 3/ Catch 1974	U.S. Commer. Harvest 1975	Foreign Harvest 1975
Haddock	ICNAF 5	47,000	6,200	6,200	0	200	5,168	1,438
Cod	ICNAF 5Y	10,000	7,700	5,000(a) 2,300(b)	0		8,700	100
	ICNAF 5Z and 6	50,000	30,000	20,000(a) 10,000(b)	0	12,400	15,200	7,900
Yellowtail Flounder	ICNAF 5Ze	16,000	10,000	10,000	0		14,500	100
	ICNAF 5Zw and 6	9,200	4,000	4,000	0	Trace	5,500	0

1/ Fishing morality from commercial and recreational data.

2/ (a) Commercial
(b) Recreational

3/ The 1974 recreational catch is from Maine to and including New York.

Figures 6A ANATOMY OF MANAGEMENT UNDER PUBLIC LAW 94-265



As a consequence of differences in the nature of the dynamic models used for assessment or fish populations, two measures of fishing mortality (F_{max} and F_{MSY}) have been identified as reference points on which to base regulations for optimizing yield. F_{max} refers to the fishing mortality rate at which the average catch per recruit to a fishery is at a maximum. It is a function of the growth and natural mortality processes within the fish stock and of the size (age) at which the fish enter (i.e., "are recruited to") the fishery, and it is therefore independent of changes in recruitment. F_{MSY}, on the other hand; refers to the fishing mortality rate at which the average long-term catch from the fish stock as a whole is highest and is therefore a function of the total production processes within the fish stock, including recruitment. Where the average level of recruitment does not change directly in response to changes in stock size, F_{max} and F_{MSY} will correspond. In the absence of detailed knowledge of the relationship between stock size and recruitment for particular stocks, this correspondence was assumed by ICNAF in the presentation of scientific advice on management.

Principal features of the F_{max} reference point are identified as follows with regard to a basis for management action:

(a) The form of the relationship between catch per recruit and fishing mortality (F) differs markedly for the various fish stocks according to their growth and natural mortality characteristics. For some stocks, F_{max} occurs at a relatively high level of fishing mortality and it may not be clearly defined. Furthermore, its value for each stock is dependent upon the age and pattern of recruitment to the fishery

(b) Although F_{max} defines the fishing mortality rate at which the greatest catch will be obtained from each recruit entering the fishery by taking no account of the relationship between the size of the spawning stock and recruitment, it does not necessarily correspond with that giving the highest average catch (MSY) for the fish stock as a whole (although, as indicated above, it does so if average recruitment does not change with changes in stock size)

(c) Because F_{max} takes no account of the stock and recruitment relationship, management measures based on this reference point do not guarantee the maintenance of an optimum average level of recruitment.

(d) The F_{max} level of fishing takes no account of possible economic objectives and factors.

This indicates that the F_{max} reference point has potential limitations which have to be recognized and evaluated in the provision of scientific advice on management action. They are obviously greatest with respect to fish stocks for which the relationship between yield per recruit and fishing mortality has no clearly defined maximum or, if present, occurs at a relatively high value of fishing mortality rate. In these situations, the setting of catch quotas at the F_{max} level may lead to a severe reduction in the stock size, reduction in the number of age groups in the exploited stock, large short-term changes in catch (and hence in the magnitude of the short-term quota changes), and possible recruitment failures due to the generation of too low a spawning stock size.

The principal element of the biological system governing the adequacy of F_{max} as a basis for management action is the recruitment process, both its variability due to environmental factors and the relationship between recruitment levels and spawning stock size. At present, little is known about the latter relationship so that the evaluation has usually been made on a generally qualitative basis using all available information on the size and composition of the stock and the observed variability in recruitment together with the relationship to other components of the exploited ecosystem. However, the relationship is taken into account empirically in some assessment models.

In view of the possible substantial adverse consequences of setting the fishing mortality rate too high in cases where there is doubt about its adequacy, a more restrictive management system (other than controlling the size (age) of recruitment to the fishery through mesh regulation), might comprise either, or a combination, of the following elements: (i) fixing the fishing mortality rate at a level somewhat lower then F_{max}, and (ii) setting a target spawning stock size.

II.3.a Cod.

Two groups of cod are considered as stocks for management purposes: (a) the Georges Bank—Southern New England stock (ICNAF areas 5Z and 6), and; (b) the Gulf of Maine stock (ICNAF area 5Y). Maximum sustainable yields for commercial fisheries in these areas are 50,000 metric tons and 10,000 metric tons respectively. Recreational landings from both stocks were estimated as 16,400 m.t. in 1970 and 12,400 m.t. in 1974. The estimated 1974 recreational catch was 800 m.t. from Maine and New Hampshire and 3,030 m.t. from Massachusetts. Applying half of the Massachusetts landings and all of the Maine and New Hampshire landings to area 5Y, it appears that 1974 recreational catches were about 10,100 m.t. from area 5Z–6 and 2,300 m.t. from area 5Y. Assuming that the same relative amounts were taken in the two areas in 1970, recreational landings were about 13,400 m.t. from area 5Z–6 and 3,000 m.t. from area 5Y. Since U.S. and foreign commercial catches have averaged (1970–1974) 26,500 m.t. and 7,400 m.t. in the two areas, it appears that combined commercial-recreational removals have been about 37,000–40,000 m.t. from the 5Z–6 stock and around 10,000 m.t. from the 5Y stock in recent years.

While catch levels have apparently been at or below the MSY levels in 5Y and 5Z–6, the levels of F have been greater than F_{max} and the stock abundance needs to increase in order to provide the MSY. ICNAF scientists recommended that the 1977 commercial catches be set at the $F_{0.1}$ levels of 3200 m.t. for 5Y and 15,000 m.t. for 5Z–6. Considering the economic and social inputs provided mainly by the U.S. commercial fisheries advisors however, these figures were raised to 5000 m.t. for 5Y and 20,000 m.t. for 5Z–6. Expected catches by recreational fishermen in 1977 would probably amount to no more than 2,300 m.t. in 5Y and 10,000 m.t. in 5Z–6 bringing the optimum yields for 1977 to 7,300 m.t. for 5Y and 30,000 m.t. for 5Z–6. (This proposed total 1977 catch level is less than the total foreign and domestic catch in recent years but the proposed U.S. commercial and recreational catch for 1977 will be greater than the U.S. catches in recent years. These catch levels, therefore, should not limit either the U.S. commercial or recreational fisheries in 1977 and should also allow stock rebuilding in both areas.)

The recreational catches are now included in the MSY, OY, and U.S. capacity figures (Table 54). This differs from the previous assessments where recreational mortality was combined with natural mortality and considered in the changes in total stock size, but was not included in the fishery catch statistics due to the poor quality of the recreational data. The present estimates of MSY, OQ, and U.S. capacity are therefore less reliable than the previous estimates.

We recommend the optimum yield be set at 7,700 m.t. for 5Y and 30,000 m.t. for 5Z and 6. The projected commercial harvest for the respective areas is 5,000 m.t. and 20,000 m.t. A projected total 1977 recreational catch of 12,300 m.t. was estimated 2,300 m.t. for 5Y and 10,000 for 5Z and 6.

II.3.b Yellowtail Flounder.

As noted above (Section II.2.b) there are two groups of yellowtail flounder considered as stocks for management purposes. There are the Georges Bank stock (ICNAF area 5Ze) and the Southern New England stock (ICNAF area 5Zw and 6). Maximum sustainable yields have been estimated at 16,000 m.t. and 9,200 m.t. respectively. Recreational fishermen do not take appreciable amounts of yellowtail flounders. Resource surveys and catch effort statistics indicate that the abundance of the 5Zw–6 stocks is declining and that the 5Ze stock is stable but slightly below the level required to produce MSY. From an ecological viewpoint catch from both stocks should be reduced as much as possible in order to increase the spawning biomass and provide a buffer against recruitment failures. However, this would cause undue economic hardship for the harvesting sector and coastal communities. Accordingly, we recommend optimum yields of 10,000 m.t. for area 5Ze and 4,000 m.t. for areas 5Zw+6. These harvest levels should provide for adequate rates of stock recovery without causing substantial, adverse, short term economic impacts. Over the long term, recovery of these stocks should result in some economic growth of the harvesting sector and secondary benefits for coastal communities.

II.3.c Haddock.

Removals should be kept at the lowest possible level to allow for rapid recovery of the haddock stock to the MSY level. We recommend the optimum yield be set at 6,200 m.t., which would include both recreational and commercial catch. It is estimated there would be an unavoidable by-catch of about 6,000 m.t. in other northwest Atlantic trawl fisheries, which may be taken only as undirected by-catch.

II.4. Suggested Management Measures.

Due to the condition of the stocks of these three species, it is recommended that the following management measures be adopted as applicable to domestic fishermen.

(a) Quotas.

(1) Cod.—This proposed total 1977 catch level is less than the total foreign and domestic catches in recent years but the proposed U.S. commercial and recreational catch for 1977 will be greater than the U.S. catches in recent years. These catch levels therefore should not limit either the U.S. commercial or recreational fisheries in 1977 and should also allow stock rebuilding in both areas.

(a) It is recommended that the landings of cod from the Gulf of Maine be limited to 5,000 m.t. commercial and 2,300 m.t. recreational.

(b) It is recommended that the landings of cod from Georges Bank be limited to 20,000 m.t. commercial and 10,000 m.t. recreational.

(2) Yellowtail Flounder.—(a) It is recommended that the landings of yellowtail flounder from Georges Bank east of 69° west longitude be limited to 10,000 m.t.

(b) It is recommended that the landings of yellowtail flounder from the area west of 69° west longitude be limited to 4,000 m.t.

(3) Haddock. It is recommended that the landings of haddock from the Gulf of Maine and Georges Bank be limited to 6,200 m.t.

(b) Mesh Size Regulation.

The taking of cod, haddock, and yellowtail flounder be prohibited from an area formally designated as ICNAF SA5 with trawl nets having, in any part of the

net other than the codend, meshes dimensions less than 114 mm or 4¼ inches, and having, in the codend of the nets, meshes of dimensions less than 130 mm or 5⅛ inches. These mesh sizes relate to manila twine netting when measured wet after use or the equivalent thereof when measured dry before use. The Council may, on the basis of scientific advice as to selectivity equivalents, determine the appropriate mesh sizes when trawl nets made of materials other than manila are used or when seine nets are used.

(1) Mesh sizes are measured by a flat wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of twenty consecutive meshes, at least ten meshes from the landings, and when measured in the codend of the net beginning at the after end and running parallel to the long axis.

(2) In order to avoid impairment of fisheries conducted primarily for other species and which take small quantities of cod, haddock, and yellowtail flounder incidentally, persons permitted to fish may take cod, haddock, and yellowtail flounder with nets having a mesh size less than that specified in the preceding paragraph, so long as persons on board a vessel fishing primarily for other species do not have in possession (either at sea or at the time of offloading) cod, hadock, or yellowtail flounder in amounts in excess of 2,500 kg (5,510 lbs) for each species or 10 percent by weight of all fish on board such vessel for each species, whichever is greater.

(3) Any means or device is prohibited, other than those described in paragraph 4, which would obstruct the meshes of the nets or which would otherwise diminish the size of the meshes of the nets. Devices may be attached to the upper side of the codend in such a manner that they will not obstruct the meshes of the codend. Any such device must have the approval of the Council based on scientific advice that the attached devices do not obstruct the meshes or reduce significantly the selectivity of the codend.

(4) Canvas, netting, or other material may be attached to the underside only of the codend of a net to reduce and prevent damage.

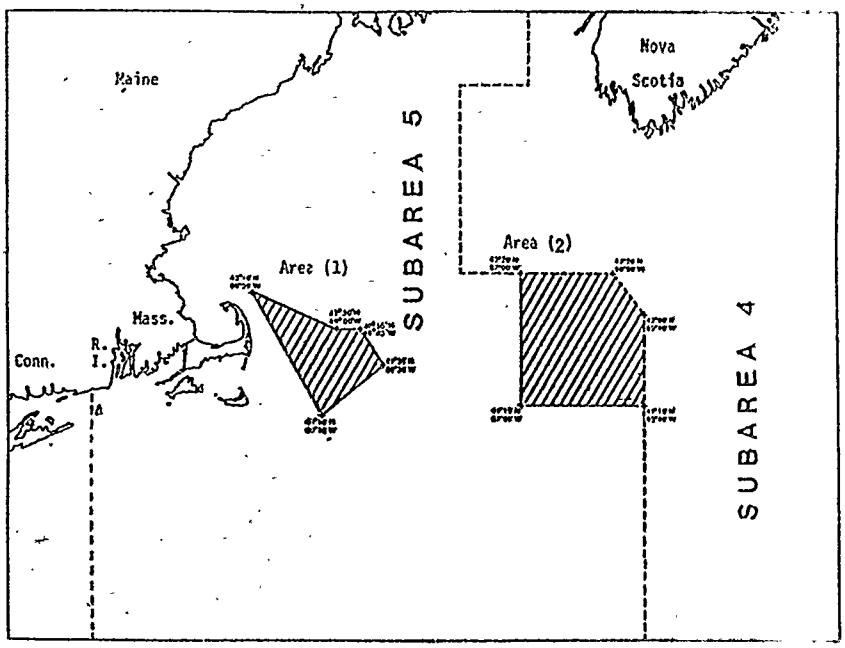
(C) Area and Season Restrictions.

(1) Commercial.—It is prohibited to use fishing gear other than pelagic fishing gear (purse seines or true midwater trawls using midwater trawl doors incapable of being fished on the bottom) and to attach any protective device to pelagic fishing gear or employ any means which would in effect make it possible to fish for demersal species during March, April, and May in areas bounded by straight lines connecting the following coordinates in the order listed:

(1) 69°55′ W, 42°10′ N
69°10′ W, 41°10′ N
68°30′ W, 41°35′ N
68°45′ W, 41°50′ N
69°00′ W, 41°50′ N
(2) 67°00′ W, 42°20′ N
67°00′ W, 41°15′ N
65°40′ W, 41°15′ N
65°40′ W, 42°00′ N
66°00′ W, 42°20′ N

Figure 7

Chart illustrating the areas affected by Recommendation C for Regulation of the Fishery for Haddock in the area formerly known as Subarea 5.



The provisions of this paragraph shall not apply to vessels that fish in area (1) with hooks having a gape of not less than 3 cm, or to vessels that fish in areas (1) and (2) with gear designed to fish for crustaceans and scallops (see Figure 7).

The plan recommends minimum size limits for haddock and cod be imposed in two steps over a two-year period.

HADDOCK

(1) Calendar year 1977—A minimum size of 420 millimeters is recommended, representing the average length of a 2½ year old fish. (The average weight of such a fish would be about 0.7 kilogram.)

(2) Calendar Year 1978.—The minimum size would be increased to 520 millimeters, representing an average length of a 3 year old fish. (The average weight would be 1.63 kilograms.)

COD

(1) Calendar Year 1977.—A minimum size of 400 millimeters is recommended (representing the average length of a 2 year old fish) for recreational and commercial fishing. (The average weight of such a fish would be about 0.6 kilogram.)

(2) Calendar Year 1978.—The minimum size would be increased to 520 mm representing an average length of a 3 year old fish. (The average weight would be 1.41 kilograms.)

(E) Yellowtail Flounder Landing Restrictions.

The plan further proposes that any vessel shall land no more than 5,000 pounds of yellowtail for each crew member on board up to a maximum of 30,000 pounds per vessel per trip.

III. Minimum size limits.

1. Suggested regulations, forthcoming.

[FR Doc.77-2658 Filed 1-27-77;8:45 am]

PACIFIC FISHERY MANAGEMENT COUNCIL'S ANCHOVY ADVISORY PANEL

Public Meeting

Notice is hereby given of a meeting of the Pacific Fishery Management Council's Anchovy Advisory Panel, established under section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Pacific Council, established under section 302 of the Act, will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of California, Oregon, and Washington. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public meetings.

The Anchovy Advisory Panel, composed of persons who are either actually engaged in the harvest of, or are knowledgeable and interested in the conservation and management of the anchovy resource, assists the Council in the development or amendment of an anchovy fishery management plan.

The meeting will be held February 16, 1977, at the California Department of Fish and Game offices, 350 Golden Shore, Long Beach, California. The meeting will convene at 10 a.m. and adjourn at 4 p.m.

Proposed Agenda:

1. Panel organization.
2. Consideration of development of an anchovy fishery management plan.
3. Review of reports and documents related to anchovy management.
4. Inter-fishery aspects of anchovy management.

This meeting will be open to the public and there will be seating for approximately 25 members of the public on a first-come, first-served basis.

Members of the public having an interest in specific items for discussion are advised that changes to the agenda are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact by February 9, 1977:

Mr. Svein Fougner, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone 213-548-2575.

At the discretion of the Panel, interested members of the public may be permitted to speak at times which will allow the orderly conduct of business. Persons who wish to submit written statements should contact Mr. Fougner at the address given above. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the meeting.

Dated: January 25, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-2881 Filed 1-27-77;8:45 am]

Office of the Secretary

COMMERCE TECHNICAL ADVISORY BOARD

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I. (Supp. V, 1975) notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Tuesday, February 22, 1977, from 9 a.m. to 5 p.m. and Wednesday, February 23, 1977, from 8:30 a.m. to 12 Noon, at the National Bureau of Standards, Room 1107 Radio Building, Boulder, Colorado.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. Tentative agenda items include:

Continuation of discussion on the "Role of Technological Innovation in U.S. Productivity, Foreign Trade, and General Welfare of Society", and
Report from Energy Policy Panel.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference and Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3865, U.S. Department of Commerce, Washington, D.C. 20230; telephone 202-377-5065.

BETSY ANCKER-JOHNSON,
Assistant Secretary for
Science and Technology.

JANUARY 24, 1977.

[FR Doc.77-2797 Filed 1-27-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR GENETIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetic Biology.
Date and time: February 17-19, 1976, 9:00 a.m. to 6:00 p.m. each day.
Place: Room 517, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. J. Christopher Cordaro, Program Director, Genetic Biology Program, Rm. 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-5985.
Purpose of panel: To provide advice and recommendations concerning support for research in Genetic Biology.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 25, 1977.

[FR Doc.77-2820 Filed 1-27-77;8:45 am]

JOINT MEETING OF THE SYSTEMATIC AND ECOLOGICAL SCIENCES PANEL

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Joint Meeting of the Systematic and Ecological Sciences Panels.
Date and time: February 17 and 18, 1977, 8:30 a.m. to 5:00 p.m. each day.
Place: Room 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John W. Wright, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-5846.
Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology and ecological sciences.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 25, 1977.

[FR Doc.77-2821 Filed 1-27-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 313]

ASSIGNMENT OF HEARINGS

JANUARY 25, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-F-12953, Red Ball Motor Freight, Inc.—Purchase (Portion)—Thunderbird Freight Lines, Inc.; F.D. 28260, Red Ball Motor Freight, Inc. Note; MC 69512 (Sub-No. 11), Thunderbird Freight Lines, Inc. and MC 2229 (Sub-No. 196), Red Ball Motor Freight, Inc., now being assigned April 12, 1977 (14 days) at Los Angeles, California, in a hearing room to be later designated.

MC 141697 Sub 2, Phil Poggi Trucking now assigned February 23, 1977 at Phoenix, Arizona is cancelled, application dismissed.

MC 134922 (Sub-No. 175), B. J. McAdams, Inc. now assigned January 31, 1977 at Chicago, Illinois is cancelled, application dismissed.

MC 127042 Sub 175, Hagen, Inc. now being assigned March 29, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 106497 Sub 132, Parkhill Truck Company now being assigned March 30, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 109692 Sub 38, Grain Belt Transportation Company and MC 138076 Sub 6, Heavy Hauling, Inc. now being assigned March 31, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

MC 30844 Sub 571, Kroblin Refrigerated Xpress, Inc. now being assigned April 4, 1977 (1 day) at Kansas City, Missouri in a hearing room to be later designated.

MC 114273 Sub 254, CRST, Inc. now being assigned April 5, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

MC 138823 Sub 15, Miller Trucking Co., Inc. now being assigned April 7, 1977 (2 days) at Kansas City, Missouri in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2890 Filed 1-27-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 25, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed by February 14, 1977.

FSA No. 43310—*Vinyl Chloride from Points in Louisiana and Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B-653), for interested rail carriers. Rates on vinyl chloride, in tank-car loads, as described in the application, from specified points in Louisiana and Texas, to Perryville, Maryland and Pottstown, Pennsylvania.

Grounds for relief—Market competition.

Tariff—Supplement 28 to Southwestern Freight Bureau, Agent, tariff 12-J, I.C.C. No. 5219.

Rates are published to become effective on February 22, 1977.

FSA No. 43311—*Joint Water-Rail Container Rates—Black Sea Shipping Company.* Filed by Black Sea Shipping Company, (No. 103), for itself and interested rail carriers. Rates on general commodities, between ports in Europe, and rail stations on the U.S. Atlantic Coast Seaboard.

Grounds for relief—Water competition.

FSA No. 43312—*Lightweight Aggregates, Viz.: Cinders, Etc., Between Points in Southern Territory.* Filed by M. B. Hart, Jr., Agent, (No. A6349), for interested rail carriers. Rates on lightweight aggregates, viz.: cinders, clay and shall aggregate, etc., in carloads, as described in the application, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping; rate relationship.

Tariff—Supplement 112 to Southern Freight Association, Agent, tariff 388-L, I.C.C. No. S-1188.

Rates are published to become effective on February 28, 1977.

By the Commission:

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2894 Filed 1-27-77;8:45 am]

[Finance Docket No. 27620; 27621]

MAINE CENTRAL RAILROAD CO. v. AMOSKEAG, CO. FREDERICK C. DUMAINE AND DUMAINES

Application for Authority To Acquire Control

JANUARY 18, 1977.

Application of Amoskeag Company, a Delaware Corporation, and Dumaines, a voluntary association, under section 5(2) of the Interstate Commerce Act for authority to acquire control of Maine Central Railroad Company through voting of trusteed stock.

By notice served November 24, 1976, parties to the above-entitled proceeding and other interested parties were given until January 19, 1977, to submit comments on the draft environmental impact statement prepared for the proposed action by the Commission's Section of Energy and Environment. The commenting period has been extended to February 3, 1977.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2888 Filed 1-27-77;8:45 am]

[Notice No. 10]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 24, 1977.

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.

MOTOR CARRIERS OF PROPERTY

No. MC 102616 (Sub-No. 927TA), filed January 13, 1977. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Road, P.O. Box 5555, Akron, Ohio 44313. Applicant's representative: David F. McAllister, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from Middletown, Ohio, to points in Indiana, Illinois, Michigan and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Vistron Corporation, 313 Midland Bldg., Cleveland, Ohio 44115. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 E. Ninth St., Cleveland, Ohio 44199.

No. MC 113658 (Sub-No. 12TA), filed January 12, 1977. Applicant: SCOTT TRUCK LINE, INC., 5871 N. Broadway, P.O. Box 16346, Denver, Colo. 80216. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Oak Brook, Ill. 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, packinghouse products and commodities* in motor carrier certificates, 61 M.C.C. 209 and 766, from Denver, Colo., to points in Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Circle C Beef Co., 5900 York St.; United Packing Co., 5000 Clarkson St.; Colorado Beef Processors, Inc., 5590 High St.; Pepper Packing Co., 901 E. 46th Ave.; and Litvak Meat Co., Inc., 5900 York St., Denver, Colo. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 113843 (Sub-No. 236TA), (Correction), filed December 21, 1976, published in the FEDERAL REGISTER issue of January 11, 1977, and republished as corrected this issue. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, Mass. 02210. Applicant's representative: Lawrence T. Shells (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food and food products*, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plantsite and facilities of Granite State Packing Co., at or near Manchester, N.H., to points in Colorado, District of Columbia, Illinois, Indiana, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, Virginia and Wisconsin, restricted to traffic originating at the above-named origin and destined to the above-named destinations, for 180 days. Supporting shipper: Granite State Packing Co., 163 Hancock St., Manchester, N.H. 03105. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway St., Boston, Mass. 02114. The purpose of this republication is to indicate that Manchester is located in New Hampshire, in lieu of New Jersey.

No. MC 114004 (Sub-No. 159TA), filed January 14, 1977. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles (except recreational vehicles), *and buildings*, in sections (except prefabricated buildings), in initial movements, in truck-away service, from Alexander City and Russellville, Ala.; Woodland, Calif.; Longmont, Colo.; Lake City and Ocala, Fla.; Waycross, Ga.; Elkhart, Ind.; Manhattan and Newton, Kans.; Gering, Nebr.; and Stayton, Oreg., to points in the United States, including Alaska but excluding Hawaii, for 180 days. Supporting shipper: Guerdon Industries, Inc., P.O. Box 1259, Louisville, Ky. 40201. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 114004 (Sub-No. 160 TA), filed January 14, 1977. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, Ark. 72209. Applicant's representative: Winston Chandler, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, in sections, moving on wheeled undercarriages (except prefabricated buildings), from McNairy County, Tenn., to points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, South Carolina, Virginia and West Virginia, for 180 days. Supporting shipper: Townhouse, Inc., P.O. Box 449, Selmer, Tenn. 38379. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 116710 (Sub-No. 26TA), filed January 13, 1977. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., P.O. Box 6176, 2001 E. Texas St., Bossier City, La. 71010. Applicant's representative: Joe T. Lanham, 1102 Perry-Brooks Bldg., Austin, Tex. 78701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous aluminum chloride*, in bulk or in sealed bins, from the plantsite of Aluminum Co., of America, at or near Alcoa, Tenn., to Mobile Ala.; Baton Rouge, La.; Carville and St. James, La.; Baltimore, Md.; Hamilton, Picayune, and Gulfport, Miss.; Sugar Creek, Mo.; Bound Brook and East Hanover, N.J.; Ashtabula, Ohio; West Elizabeth, Pa.; Institute, W. Va.; Texas City, Tex.; and Freeport and Seadrift, Tex.; Port Huron, Mich., under a continuing contract with Aluminum Company of America, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Aluminum Company of America, 1501 Alcoa Bldg., Pittsburgh, Pa. 15219. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 9038 Federal Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 124679 (Sub-No. 72TA), filed January 11, 1977. Applicant: C. R. ENGLAND & SONS, INC., 975 W. 2100 South, Salt Lake City, Utah 84119. Applicant's representative: Daniel E. England, 300 Arrow Press Square, Bldg. #2, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Fairfield, Calif., to Cedar City, Logan, Prince, Provo, Salt Lake City, and Tooele, Utah, for 180 days. Supporting shippers: There are approximately 6 statements of support attached to the 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: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 126736 (Sub-No. 92TA), filed January 7, 1977. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 E. 21st St., P.O. Box 1559, Jacksonville, Fla. 32201. Applicant's representative: L. H. Blow, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground dolomitic limestone and ground calcium limestone*, in bulk in dump trailers, from Jackson County, Fla., to points in Alabama and Georgia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Green Valley Lime Company, Inc., P.O. Box 1505, Marianna, Fla. 32446. Send protests to: Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 128007 (Sub-No. 95 TA), filed January 13, 1977. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: Larry E. Gregg, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Premixed mineral feed ingredients*, in bulk, from the plantsite and storage facilities of Ragland Mills, Inc., in Newton County, Mo., to points in DeSota County, Miss., and Gregg County, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ragland Mills, Inc., Route 2, Box 55A, Neosho, Mo. 64850. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101, Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 128866 (Sub-No. 58 TA), filed January 13, 1977. Applicant: B & B TRUCKING, INC., P.O. Box 128, 9 Brade Lane, Cherry Hill, N.J. 03034. Applicant's representative: J. Michael Farrell, 1725 K St., N.W., Suite 814, Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum foil and sheet*, from the plantsites of the Aluminum Company of America, at Davenport, Iowa, Lebanon, Pa., and Alcoa, Tenn., and from Consolidated Aluminum Company, at Jackson, Tenn., to the plantsite of Penny Plate, Inc., at Waynesboro, Va.; and (2) *Aluminum food containers*, from the plantsite of Penny Plate, Inc., at Waynesboro,

Va., to points in Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Wisconsin, for 180 days. Supporting shipper: Penny Plate, Inc., P.O. Box 458, Haddonfield, N.J. 08033. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608.

No. MC 129219 (Sub-No. 9 TA), filed January 11, 1977. Applicant: CMD TRANSPORTATION, INC., 12340 S. E. Dumolt Road, Clackamas, Oreg. 97015. Applicant's representative. Philip G. Skofstad, P.O. Box 594, Gresham, Oreg. 90730. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Waste paper products* for recycling or reuse in furtherance of recognized pollution control programs, from Salt Lake City, Utah, to Newberg, Oregon City and Portland, Oreg.; and (2) *Newsprint paper*, in rolls, from Oregon City and Newberg, Oreg., to Salt Lake City, Utah, under a continuing contract with Publishers Paper Company, for 180 days. Supporting shipper: Publishers Paper Company, 6637 S. E. 100th Ave., Portland, Oreg. 97266. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S. W. Yamhill St., Portland, Oreg. 97204.

No. MC 129613 (Sub-No. 24 TA), filed January 13, 1977. Applicant: ARTHUR H. FULTON, P.O. Box 86, Stephens City, Va. 22655. Applicant's representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paperboard and materials, supplies and equipment* used in the manufacture theref, between Halltown, W. Va., and its commercial zone and points in New Jersey, New York, Pennsylvania and Connecticut, under a continuing contract with Halltown Paperboard Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Halltown Paperboard Company, Halltown, W. Va. 25423. Send protests to: Interstate Commerce Commission, 12th & Constitution Ave., N.W., Room 1413, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 134477 (Sub-No. 140TA), filed January 12, 1977. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Road, W. St. Paul, Minn. 55118. Applicant's representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except in bulk), from the plantsite and storage facilities utilized by Whitehall Packing Company, Inc., at or near Whitehall and Eau Claire, Wis., to points in Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and Washington, D.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whitehall Packing Co., Inc., P.O. Box 215, Whitehall, Wis. 54773. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 134645 (Sub-No. 15TA), filed January 14, 1977. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Ave., South, P.O. Box 944, St. Cloud, Minn. 56301. Applicant's representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A 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 plantsite and storage facilities utilized by Landy of Wisconsin, at or near Eau Claire, Wis., to points in Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and the District of Columbia, for 180 days. Supporting shipper: Landy of Wisconsin, 2411 3rd St., Eau Claire, Wis. 54701. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 140384 (Sub-No. 2TA), filed January 10, 1977. Applicant: BERNARD D. HARRIS, 4146 State St., New Orleans, La. 70125. Applicant's representative: Harold R. Ainsworth, 2307 American Bank Bldg., New Orleans, La. 70130. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the Southern Railway Shed H at 511 N. Villere St., New Orleans, La., to Baton Rouge, Denham Springs, Gonzales, Hammond, Houma, Luling, Morgan City, Raceland, Thibodaux and Vacherie, La., restricted to traffic having an immediate prior movement by rail, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 19 statements of support attached to the 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: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Ave., 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 140908 (Sub-No. 3TA), filed January 14, 1977. Applicant: COMMERCIAL & PACKAGE DELIVERY SERVICE, INC., Route 6, Box 53-A, Wilmington, N.C. 28401. Applicant's representative: James E. Savitz, 4 Professional Drive, Suite 145, Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular 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 points in North Carolina and South Carolina, restricted to packages not to exceed 150 pounds, for 180 days. Supporting shippers: There are approximately 29 statements of support attached to the 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: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 141914 (Sub-No. 5TA), filed January 12, 1977. Applicant: FRANKS & SON, INC., Rt. 1, Box 108A, Big Cabin, Okla. 74332. Applicant's representative: Gary Brasel, Mazzanine Floor, Beacon Bldg., Tulsa, Okla. 74103. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Coal and coal* by-products, from points in Oklahoma, to points in Arkansas, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah and Wyoming, for 180 days. Supporting shippers: D & R Coal Company, 1008 Main St., Quinton, Okla. 74561. Leon's Coal Company, Box 415, Welch, Okla. 73469. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 142186 (Sub-No. 4TA), filed January 14, 1977. Applicant: WHEELS WEST, INC., 612 159th Place, S.E., Bellevue, Wash. 98008. Applicant's representative: Henry C. Winters, 1100 IBM Bldg., Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of mobile homes and utility trailers, automotive springs, suspensions and parts thereof, brake drums, brake assemblies and parts thereof, tailgate hoists and parts thereof, wheels and wheel attaching parts* for motor vehicle chassis and motor vehicle undercarriage, from Henderson, Ky., Wyandotte, Mich., Akron and Kenton, Ohio, to Portland, Oreg., restricted to a transportation service to be performed under a continuing contract with Rivco Pacific, Inc., of Portland, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rivco Pacific, Inc., P.O. Box 14158, Portland, Oreg. 97214. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142258 (Sub-No. 1TA), filed January 11, 1977. Applicant: DALE BLAND TRUCKING, INC., RR No. 1, Switz City, Ind. 47465. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in dump trucks, from points in Jefferson and Saline Counties, Ill., to points in Vanderburgh County, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arkla Industries, Inc., Evansville, Ind. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 142689 (Sub-No. 1TA), filed January 13, 1977. Applicant: REM TRANSPORT CO., INC., 25-36 Jackson Ave., Long Island City, N.Y. 11101. Applicant's representative: Harold Sacks, 19 W. 44th St., New York, N.Y. 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and plastic films and sheets*, from Bound Brook, South Bound Brook, Piscataway and East Brunswick, N.J., to Newton Upper Falls, Mass., and return of same products, to New York Metropolitan area, and counties of northern N.J., i.e. Passaic, Bergen, Hudson, Morris, Essex, Somerset and Union, under a continuing contract with Tenneco Chemicals, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tenneco Chemicals, Inc., Turner Place, P.O. Box 365, Piscataway, N.J. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza. New York, N.Y. 10007.

No. MC 142803TA, filed January 12, 1977. Applicant: SIMPSON TRUCKING, INC., R.F.D. No. 4, Harrisburg, Ill. 62946. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from Harrisburg and Waltonville, Ill., to Evansville, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David Smith, Senior Buyer, Whirlpool Corporation, Evansville Division, Highway 41 North, Evansville, Ind. 47727. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142811TA, filed January 13, 1977. Applicant: S.R.I. TRUCKING CO., 1000 N. Cindy Lane, Carpinteria, Calif. 93013. Applicant's representative: Steven M. Kirby, 3760 State St., Santa Barbara, Calif. 93105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Restaurant supplies, foodstuffs (canned), processed meat, fresh meat, carcass beef, baking goods (frozen), flour, shellfish (frozen), cheese, potatoes (frozen), dairy products, poultry (frozen), poultry (frozen-processed), fish (frozen), fish (frozen-processed), produce-fresh, vegetables-frozen, syrup, fats and oils (processed), dressings and furniture and fixtures;* from (1) the warehouse facilities of Sambo's Restaurants, Inc., in Carpinteria, Calif., to all Sambo's Restaurants located in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming, with return backhaul trips from those states to Carpinteria, Calif.; and (2) from the warehouse facilities of Sambo's Restaurants, Inc., in Florence, Ky., to all Sambo's Restaurants located in Alabama, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and West Virginia with return backhaul trips from those states to Florence, Ky.; and (3) between the warehouse facilities of Sambo's Restaurants, Inc., in Carpinteria, Calif., and Florence, Ky. Restriction: Restricted to a transportation service to be performed under a continuing contract with Sambo's Restaurants, Inc., for 180 days. Supporting shipper: Sambo's Restaurants, Inc., 3760 State St., Santa Barbara, Calif. 93105. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

PASSENGER APPLICATIONS

No. MC 139210 (Sub-No. 4TA), filed January 13, 1977. Applicant: WESLEE ENTERPRISES, INC., doing business as ALASKA-YUKON MOTORCOACHES, 2434 32nd Ave., West Seattle, Wash. 98199. Applicant's representative: A. T. Wendells, 910 Bank of California Center, Seattle, Wash. 98164. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers. Restriction: Limited to passengers originating in or destined for Alaska, traveling with applicant's bus between Alaska and Prince Rupert, British Columbia, Canada, on ferries of the Alaska Ferry System, or traveling by preticketed connection with Alaska Ferries at Prince Rupert, between Seattle, Wash., and the port of entry on the International Boundary line between the United States and Canada at Sumas, Wash., over Interstate Highway 5, to junction Washington State Highway 539 and thence over Highway 539 to junction Washington State Highway 546, and thence over Highway 546 to junction of Washington State Highway 9, and thence over Highway 9 to Sumas, and return over the same route, serving no intermediate points. Restriction: Operations seasonal between April 1 and December 15 of each year. Applicant intends to tack its existing authority with MC 139210, at Haines, Alaska, applicant also intends to interline with White Pass and Yukon Route, a rail carrier at Skagway, Alaska, for 180 days. Supporting shippers: There are approximately 15 statements of support attached to the 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: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142781 (Sub-No. 1TA), filed January 14, 1977. Applicant: GREEN LINE CHARTERS LTD., 2769 E. 4th Ave., Vancouver, B.C., Canada V5M 1K1. Applicant's representative: Charles M. LaHue (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in round-trip charter operations, restricted to traffic originating at or destined to Vancouver, B.C., Canada for the account of Four Star Tours Worldwide, Ltd., between the United States and Canada International Boundary line located at points in Washington, on the one hand, and, on the other, points in Washington and Portland, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Four Star Tours Worldwide Ltd., 2027 W. 6th Ave., Vancouver, B.C., Canada. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142812TA, filed January 12, 1977. Applicant: DONNA LEE GOODNER, doing business as THE TRUCKEE STAGE COMPANY, P.O. Box 775, Truckee, Calif. 95734. Applicant's representative: Donna Lee Goodner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, including recreational equipment*, from Incline Village, Nev., via Nevada Highway 28 to Crystal Bay, Nev., thence via California Highway 28 to the junction of California Highway 267, and via California Highway 267 to Northstar, Calif., returning to California Highway 267 to junction with California Highway 28 and via that highway to Alpine Meadows, Calif., and Olympic Valley, Calif., and return; charter and special operations, between Stateline, Nev., on the one hand, and, on the other, points in Placer and Nevada Counties, Calif., for 180 days. Supporting shipper: Squaw Valley Ski Corporation, P.O. Box 2007, Olympic Valley, Calif. 95730. Send protests to: Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

WATER CARRIER APPLICATION

No. WC 1314, filed January 13, 1977. Applicant: A. WALLACE LANE & BELVA D. KERBY, 831 Riverview Blvd., Clarkston, Wash. 99403. Applicant's representative: A. Wallace Lane, 1122 14th Ave., Lewiston, Idaho 83501. Authority sought to operate as a *common carrier*, by water, in the transportation of: *General commodities*, between ports and points along the Columbia/Snake river system, from Booneville, Oreg., to Asotin, Wash., on the one hand, and ports and points along the Pacific Seaboard of the United States, from Imperial Beach, Calif., to Bellingham, Wash., on the other (except those along the Columbia and Williamette River ship channels below Booneville Dam), for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the 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: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

By the Commission:

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2895 Filed 1-27-77;8:45 am]

[Notice No. 9]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 21, 1977.

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.

MOTOR CARRIERS OF PROPERTY

No. MC 51146 (Sub-No. 484TA), filed January 11, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 S. Broadway, P.O. Box 2298, Green Bay, Wis. 54304. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic film, plastic sheeting, and cloth*, in mechanically-refrigerated trailers, from Plainfield, Conn., and Holyoke and Lowell, Mass., to Beaver Dam and Appleton, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ray-O-Vac Division, ESB Inc., 101 E. Washington Ave., Madison, Wis. 53703. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis 53202.

No. MC 61620 (Sub-No. 13TA), filed January 12, 1977. Applicant: M & G TRANSPORTATION COMPANY, INC., Gloucester, Va. 23061. Applicant's representative: Eugene Thomas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Norfolk, Va., to points in Maryland, Delaware, New Jersey, New York, Connecticut, Pennsylvania, Virginia, West Virginia, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dominican Import Co. Inc., 700 Boundry St., Chesapeake, Va. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502 Federal Bldg., 400 N. 8th St., Richmond, Va. 23240.

No. MC 93903 (Sub-No. 13TA), filed January 10, 1977. Applicant: ANDERSON'S TRUCKING CORPORATION, P.O. Box 709, Englishtown, N.J. 07726. Applicant's representative: Nathaniel H. Yohalem, Sutton Metropark, Woodbridge, N.J. 07095. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Concrete pipes and poles, light and/or telephone poles, fittings, forms, molds, connectors, grout and other equipment and accessories* used in the manufacture and installation thereof (except cranes or other lifting devices or heavy machinery), between Hillsboro, N.J., and points in Connecticut, Delaware, Maryland, the District of Columbia, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Maine, Vermont, New Hampshire, Virginia, West Virginia, Kentucky, North Carolina, Ohio and Indiana, under a continuing contract with Interpace Corporation, for 180 days. Supporting shipper: Interpace Corporation, 260 Cherry Hill Road, Parsippany, N.J. 07054. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608.

No. MC 99427 (Sub-No. 34TA), filed January 11, 1977. Applicant: ARIZONA TANK LINES, INC., 666 Grand, P.O. Box 855, Des Moines, Iowa 50309. Applicant's representative: Earl Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydroflouric acid*, in bulk, in tank vehicles (shipper owned), from Phoenix, Ariz., to Kokomo, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kerley Chemical Corporation, 2801 W. Osborn Road, Phoenix, Ariz. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Opertions, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 112520 (Sub-No. 329TA), filed January 11, 1977. Applicant: MCKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Bldg. Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed clay catalyst*, in bulk, in tank vehicles, from Attapulgus, Ga., to New Castle, Wyo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Engelhard Minerals & Chemicals Corp., Menlo Park, Edison, N.J. 08817. Send protests to: Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 117765 (Sub-No. 220TA), filed January 10, 1977. Applicant: HAHN TRUCK LINE, INC., 5315 N.W. 5th St., P.O. Box 75218, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Perlite*, in containers or bags, from the plantsite of Persolite Products, at or near Florence Colo., to points in Arkansas and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Perlite of Oklahoma, 3304 Alexander Lane, Bethany, Okla. 73008. Send protests to: Joe Green, District Supervisor, Room 240, Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 117940 (Sub-No. 207TA), filed January 11, 1977. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Bruce A. Bullock, Suite 530 Univac Bldg., 7100 W. Center Road,

Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* as are dealt in by retail department stores (except foodstuffs and furniture), and (2) *Furniture*, in mixed loads with the commodities in (1) above; (a) from points in the New York, New York Commercial Zone, points in the Philadelphia, Pa., Commercial Zone, and points in New Jersey, Massachusetts and Connecticut, to points in the Lansing, Mich., Commercial Zone, points in the Grand Rapids, Mich., Commercial Zone, Wyoming, Mich., points in the Minneapolis-St. Paul, Minn., Commercial Zone, and Minnetonka, Minn., and (b) from points in the Chicago, Ill., Commercial Zone, to points in the Minneapolis-St. Paul, Minn., Commercial Zone and Minnetonka, Minn., restricted to traffic originating at the named origins and destined to the facilities of Modern Merchandising, Inc., and its wholly owned subsidiaries, for 180 days. Supporting shipper: Modern Merchandising, Inc., P.O. Box 900, 1300 S. Second St., Hopkins, Minn. 55343. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 120626 (Sub-No. 2TA), filed January 11, 1977. Applicant: LAW FARMS AND CATTLE CO., doing business as LAW MOTOR LINES, 1012 Swink Ave., Rocky Ford, Colo. 81067. Applicant's representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar*, in bulk, in tank vehicles, from American Crystal Sugar Company, at or near Rocky Ford, Colo., to Wichita, Kans., for 180 days. Supporting shippers: Pepsi-Cola Bottling Co., of Wichita, Inc., 301 McLean Blvd., N.W., Wichita, Kans. The Dr. Pepper Bottling Company, Inc., 2328 S.E. Blvd., Wichita, Kans. American Crystal Sugar Company, 101 N. Third St., Moorhead, Minn. 56560. Seavey & Flarsheim Brokerage Co., a Div. of Sales Force Companies, Inc., 951 E. 33rd St., P.O. Box 1100, Wichita, Kans. 67201. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., Denver, Colo. 80202.

No. MC 121240 (Sub-No. 3TA), filed January 3, 1977. Applicant: ABC TRUCK LINES, INC., P.O. Box 1824, Elko, Nev. 89801. Applicant's representative: Antoinette M. Bloch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, between Owyhee, Nev., and Boise, Idaho, over the following route: Nevada and Idaho State Highway No. 51, from Owyhee, Nev., to Mountain Home, Idaho, thence over Interstate 80N., to Boise, Idaho and return over the same route, serving all intermediate points. Applicant requests authority to serve the commercial zones of Boise and Mountain Home, Idaho. Applicant intends to tack its existing authority with MC 121240, applicant also intends to interline at all points involved in the application, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 74 statements of support attached to the 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: W. J. Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 127187 (Sub-No. 24TA), filed January 11, 1977. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Blvd., Fergus Falls, Minn. 56537. Applicant's representative: Gene P. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed, and dry animal and poultry feed ingredients*, from the facilities of Central Soya Company, Inc., at or near Belmond, Iowa, to points in Minnesota on and south of U.S. Highway 12 (except the Minneapolis-St. Paul commercial zone), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Central Soya Company, Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, Ind. 46802. Send protests to: Ronald R. May, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 129032 (Sub-No. 33TA), filed January 11, 1977. Applicant: TOM INMAN TRUCKING, INC., 6015 S. 49th West Ave., P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: John Paul Fischer, 256 Montgomery St., San Francisco, Calif. 94194. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food and canned seafood*, in mixed loads with pet food, from San Diego, Calif., to Denver, Colo.; Davenport, Iowa; Clinton, Iowa; Milan, Ill.; Rock Island, Ill.; Sharonville, Ohio; and Blue Ash, Ohio; and points in Oklahoma and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Sun Harbor Industries, 1995 Bay Front, San Diego, Calif. 92113; Ralston-Purina Co., Checkerboard Square, St. Louis, Mo. 63188. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 129759 (Sub-No. 16TA), filed January 10, 1977. Applicant: TRIANGLE TRUCKING CO., P.O. Box 490, McKees Rocks, Pa. 15136. Applicant's representative: A. Charles Tell, Columbus Center, 100 E. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, cable, conduit, wire and strip steel and attachments therefor*, between Glendale, Marshall County, W. Va., and points in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota and Texas, under a continuing contract with Triangle PWC, Inc., for 180 days. Supporting shipper: Triangle PWC, Inc., Jersey Ave., New Brunswick, N.J. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 134404 (Sub-No. 31TA), filed January 12, 1977. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, N.J. 08835. Applicant's representative: Eugene M. Malkin, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Brass, bronze, copper, pipe and tubing, brass and copper alloys, brass, bronze, copper and nickel products, and copper billets*, from Reading, Pa. to Memphis, Tenn.; East Alton, Ill.; and Buffalo, N.Y.; and (2) *Metal scrap, fire brick, and materials and supplies* (except in bulk), used in the manufacture, sale and distribution of the aforementioned commodities, from the destination points named in (1) above, to Reading, Pa., under a continuing contract with Reading Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reading Industries, 236 Green St., South Hackensack, N.J. 07606. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 135539 (Sub-No. 4TA), filed January 11, 1977. Applicant: FARM SERVICE & SUPPLIES, INC., P.O. Box 535, Evansville, Ind. 47715. Applicant's representative: Margie Market, 305 Van Buren, Marengo, Ill. 60152. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lawn mowers, tractors, non-flammable latex paints, rotary tillers, snow blowers, and related parts and accessories including, grass catchers, engines, decks, blades, tires and chute deflectors*, from the plantsite of General Power Equipment Company, a Division of Cotter & Company, Cary, Ill., to points in Iowa, Kentucky, Wisconsin, Minnesota, Michigan, Missouri, Indiana, Nebraska and Texas, under a continuing contract with General Power Equipment Company, a Division of Cotter & Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Power Equipment Company, a Division of Cotter & Company, 203 Jandus Road, Cary, Ill. 60013. Send protests to: Fran Sterling, Transportation Assistant, Interstate Commerce Commission, Federal Bldg. and

U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 135874 (Sub-No. 69TA), filed January 7, 1977. Applicant: LTL PERISHABLES, INC., 550 E. 5th St., South, S. St. Paul, Minn. 55075. Applicant's representative: Paul Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products* (except in bulk), from the facilities of Midwest Foods Corporation, at or near Sioux Falls, S. Dak., to points in Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, Vermont, Wisconsin and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midwest Foods Corporation, P.O. Box 100, Clark, S. Dak. 57225. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 139156 (Sub-No. 3TA), filed January 7, 1977. Applicant: FAITH TRUCK LINES, INC., 26 W. 142nd St., Dixmoor, Ill. 60426. Applicant's representative: Charlie Woodard (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Muriatic acid*, in rubber lined tank vehicles, from Niagara Falls, N. Y., to Albion and Niles, Mich.; Burns Harbor, Ind.; Chicago, Ill.; and its commercial zone, Dwight, Joliet and Rockford, Ill.; and Juneau, Wis., and from Ashtabula, Ohio, to Chicago and its commercial zone and Rockford, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thompson Hayward Chemical Company, Jack H. Stitzer, Acid Sales Coordinator, 2501 S. Damen Ave., Chicago, Ill. 60608. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 139193 (Sub-No. 53TA), filed January 7, 1977. Applicant: ROBERTS & OAKE, INC., 527 E. 52nd St., North, P.O. Box 1356, Sioux Falls, S. Dak. 57101. Applicant's representative: Jacob P. Billig, Suite 300, 2033 K St., N.W., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and liquid commodities in bulk), from John Morrell & Co., at St. Paul, Minn., to points in Illinois and Wisconsin, under a continuing contract with John Morrell & Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 S. LaSalle St., Chicago, Ill. 60604. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369 Federal Bldg., Pierre, S. Dak. 57501.

No. MC 141742 (Sub-No. 1TA), filed January 7, 1977. Applicant: FLOWERS TRANSPORTATION INC., P.O. Box B, Station A, Auburn, Calif. 95603. Applicant's representative: Randall M. Faccinto, 100 Pine St., Suite 2550, San Francisco, Calif. 94111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Reno, Nev., to Denver, Colorado Springs, and Grand Junction, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rocklin Forest Products, Inc., P.O. Box 400, Roseville, Calif. 95678. Send protests to: W. J. Huetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 141813 (Sub-No. 2TA), filed January 11, 1977. Applicant: MILTON G. JANSSEN, doing business as JANSSEN TRANSPORTATION, Route 2, Box 433, Delta, Colo. 81416. Applicant's representative: Milton G. Janssen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oil shale*, from that part of Colorado that lies west of the Continental Divide and north of U.S. Highway 6 to Los Angeles, Calif., and its commercial zone, San Francisco, Calif., and its commercial zone and Livermore, Calif., and its commercial zone, and to Unita County, Utah. Applicant intends to tack its existing authority with MC 141813 Sub-No. 1, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Development Engineering Incorporated, Box A, Anvil Points, Rifle, Colo. 81650. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., Denver, Colo. 80202.

No. MC 142669 (Sub. No. 4TA), filed January 12, 1977. Applicant: GENE WALTERS AND CLARK WURTELE, doing business as, M & M TRUCKING, Buchanan, N. Dak. 58420. Applicant's representative: Charles E. Johnson, P.O. Box 1982, Bismarck, N. Dak. 58501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry animal and poultry feed, feed ingredients, and health care products*, from Mankato, Dawson, Minneapolis-St. Paul and its commercial zone, Willmar, Redwood Falls, Perham and Owatonna, Minn., to Edgeley, Dickinson and Carrington, N. Dak., and Glendive, Mont.; and (2). Paper bags, from Minneapolis, Minn., to Dickinson, Edgeley and Carrington, N. Dak., and Glendive, Mont., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Dickinson GTA Feed Plant, a Division of Farmers Union Grain Terminal Assn., Dickinson, N. Dak. 58601; Edgeley GTA Feed Plant, a Division of Farmers Union Grain Terminal Assn., Edgeley, N. Dak. 58433; Carrington GTA, a Division of Farmers Union Grain Terminal Assn., Carrington, N. Dak. 58421. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 142796TA, filed January 7, 1977. Applicant: VAN HORN MOVING & STORAGE, INC., 1421 Harrison Ave., Panama City, Fla. 32401. Applicant's representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*. Restriction: Said operations are restricted to the transportation of shipments having a prior or subsequent movement in containers beyond the points authorized. Said operations are restricted to the performance of pickup and delivery service (in connection with packing, crating, and containerization of such shipments), between points in Holmes, Jackson, Washington, Bay, Gulf, Franklin, Liberty, Gadsden, Waukulla, Calhoun and Leon Counties, Fla., for 180 days. Supporting shipper: Vanpac Carriers, Inc., 2114 MacDonald Ave., Richmond, Calif. 94801. Send protests to: Fauss, Jr., District Supervisor, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 142797TA, filed January 7, 1977. Applicant: FULTON OREGON AIR, INC., 401 S.E. 8th Ave., Portland, Oreg. 97214. Applicant's representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, Oreg. 97210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), restricted to the transportation of shipments having an immediately prior or subsequent movement by air, between the Portland International Airport, on the one hand, and, on the other, points in Oregon, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 6 statements of support attached to the 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: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 142802TA, filed January 11, 1977. Applicant: W. C. BRILEY, doing business as BRILEY TRANSPORT, Box 348, San Angelo, Tex. 76901. Applicant's representative: Thomas F. Sedberry,

1102 Perry-Brooks Bldg., Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides*, green, salted, between Tom Green County, Tex., on the one hand, and, on the other, points in Texas, New Mexico and Colorado, for 180 days. Supporting shipper: Dreiling Hide Co. and San A Angelo By Products, P.O. Box 631, San Angelo, Tex. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

PASSENGER APPLICATION

No. MC 142799TA, filed January 10, 1977. Applicant: COLONIAL COACH CORP., 17 Franklin Turnpike, Mahwah, N.J. 07430. Applicant's representative: Samuel B. Zinder, 98 Cutter Mill Road, Great Neck, N.Y. 11021. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, beginning and ending at Sutton, at Collingswood, Collingswood, N.J., and extending to Philadelphia, Pa., and return, under a continuing contract with J & G Management Co., Inc., T/A Grace Management Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J & G Management Co., Inc., T/A Grace Management Co., Sutton at Collingswood, Collingswood, N.J. 08107. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2896 Filed 1-27-77;8:45 am]

[I.C.C. Order No. 18; Under Revised Service Order No. 1252; Service Date, January 25, 1977]

REROUTING TRAFFIC

To all railroads: In the opinion of Joel E. Burns, Agent, railroads operating in the States of Ohio, Pennsylvania, and New York are unable to transport traffic over normal routes because of excessive accumulations of snow and ice.

It is ordered, That (a) *Rerouting traffic.* Railroads operating in the States of Ohio, Pennsylvania, and New York being unable to transport traffic over normal routes accordance with shippers' routing because of excessive accumulations of snow and ice, are hereby authorized to divert and reroute such traffic over any available route to expedite the movement regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carriers' disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 5:00 p.m., January 19, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 26, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 19, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2893 Filed 1-27-77;8:45 am]

[Amendment No. 1 to I.C.C. Order No. 17 Under Service Order No. 1252; Service Date Jan. 25, 1977]

REROUTING TRAFFIC

To all railroads: Upon further consideration of I.C.C. Order No. 17 (The Chesapeake and Ohio Railway Company) and good cause appearing therefor:

It is ordered, That: I.C.C. Order No. 17 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 18, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 17, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2892 Filed 1-27-77;8:45 am]

[AB 55 (Sub-No. 8)]

SEABOARD COAST LINE RAILROAD CO.

Abandonment of Lines

JANUARY 18, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Seaboard Coast Line Railroad Company between Bruce and Portsmouth, in the cities of Chesapeake and Portsmouth, Va., a distance of 3.88 miles, if approved by the Commission, does 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 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because traffic on the line has been very low for 3 years and there is no prospect of an increase in demand for rail service in the future. Also, no land use plans of an economic or industrial importance exist which would necessitate the continued operation of the line. The right-of-way has been determined to be suitable for other transportation and recreational use following abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before March 2, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2889 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART II

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

■

HEALTH AND SAFETY STANDARDS FOR METAL AND NONMETAL MINES AND MILLS

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Parts 55, 56, 57]

NEW AND REVISED HEALTH AND SAFETY STANDARDS

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under section 6 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725) to develop, revise, and promulgate health and safety standards for the purpose of the protection of life, the promotion of health and safety, and the prevention of accidents in metal and nonmetal mines and mills, it is proposed to amend Parts 55, 56, and 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations by revising certain existing standards and adding certain new definitions, deleting or revising certain advisory standards and making them mandatory, and revising and adding new mandatory standards relating to ground control; fire prevention and control; ventillation and radiation; loading, hauling, dumping; man hoisting; travelways and escapeways; electricity; personal protection; miscellaneous; and gassy mines. These standards have been developed after consultation with the Federal Metal and Nonmetal Mine Safety Advisory Committee appointed pursuant to section 7 of the Act (30 U.S.C. 726). In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix I (Supp. V 1975)) these standards were included in an agenda which was made available to the public, discussed during an open meeting of the Advisory Committee with timely notices of such meetings published in the FEDERAL REGISTER, and interested persons were permitted to attend, appear before, and file statements with the Advisory Committee.

Each standard which is to be a mandatory standard is so designated by the word "Mandatory" which appears at the beginning of the subsection in which the standard is prescribed. If the Federal Metal and Nonmetal Mine Safety Advisory Committee has recommended a mandatory standard, the standard is preceded by the word "Mandatory" and the letters "MNMSAC" in this manner "Mandatory. MNMSAC.—".

Under the provisions of subsection (e) of section 6 (30 U.S.C. 725(e)) and in accordance with the provisions of subsection (d) of section 6 of the Act (30 U.S.C. 725(d)), any persons who may be adversely affected by a proposed health and safety standard which is designated as a mandatory standard under subsections (b) and (c) of section 6 of the Act (30 U.S.C. 725 (b) and (c)), which has not been recommended as a mandatory standard by the Federal Metal and Nonmetal Mine Safety Advisory Committee, may file with the Secretary on or before the last day of the period herein fixed for the submission of written data, views, or arguments, written objections stating the grounds for such objections and requesting a public hearing on those objections subject to the provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

Under subsection (e) of section 6 of the Act proposed mandatory standards which have been recommended by the Federal Metal and Nonmetal Mine Safety Advisory Committee are not subject to public hearings.

The Mining Enforcement and Safety Administration (MESA) and the Occupational Safety and Health Administration (OSHA) entered into a Memorandum of Understanding on April 22, 1974, to (1) clarify the jurisdictional responsibility of each agency and (2) provide a procedure for the coordination and adoption of safety standards which have significant application of working conditions in mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act. The Memorandum of Understanding was published in the FEDERAL REGISTER on Friday, July 26, 1974 (39 FR 27382–27384).

In accordance with the requirements of Article D1 (a) and (b) of the Memorandum, MESA personnel consulted with representatives of OSHA regarding those OSHA standards promulgated by the Secretary of Labor as of April 22, 1974, which may have a significant application to mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act, and are not covered by mandatory standards promulgated by the Secretary of the Interior prior to the effective date of the Memorandum. After such consultations held on June 13 and October 4, 1974, MESA submitted a list identifying those OSHA standards that are not covered by mandatory standards applicable to metal and nonmetal mining and milling operations other than coal and lignite mining. Article D1(c) provides further that after determining those OSHA standards which may have significant application to working conditions in mines and mills subject to the Federal Metal and Nonmetallic Mine Safety Act, the Secretary of the Interior would publish in the FEDERAL REGISTER (1) those standards which the Secretary proposes to publish without change, and (2) those standards which he proposes to adopt with modification or revision because specific conditions associate with the metal and nonmetal mining industries warrant such modification or revision. The Memorandum also provides that the Secretary would publish the text of the proposed modified or revised standards and indicates the reasons for the modifications or revisions.

A comparison has been made between the substantive requirements of each proposed new and revised definition and mandatory standard with the corresponding OSHA definition and standard. In each instance, the proposed definition or mandatory standard affords at least the same degree of health and safety protection to the individuals working in the metal and nonmetal mining industries as its counterpart OSHA definition or standard affords those persons working in the general and construction industries subject to the Occupational Safety and Health Act.

Listed below are the action numbers of proposed definitions and mandatory standards (listed proposals) that have corresponding OSHA definitions and standards.

Part 55—1, 2, 3, 4, 8, 9, 11, 13, 39, 40, 73, 88, 89, 90, 91, 92, and 93.

Part 56—94, 95, 96, 97, 101, 102, 104, 106, 132, 133, 166, 181, 182, 183, 184, 185, and 186.

Part 57—188, 189, 191, 192, 196, 201, 202, 204, 206, 215, 224, 225, 226, 227, 228, 258, 291, 306, 307, 308, 309, 310, 311, and 336.

The listed proposals identified above include definitions for the electrical terms "circuit breaker," "conductor," "insulated," and "insulation," and, proposed mandatory safety standards concerning such mining activities as secondary drilling and blasting of material, scaling and scaling bars, rock bolt installation and torquing of rock bolts, shaft sets, blocking and wedging of timbers used for ground support in underground mining operations, criteria for automatically-actuated fire suppression systems on unattended equipment used in underground mining operations, and the location of trolley wires and trolley feeder wires in underground gassy mines. Also covered by the listed proposals are mandatory health standards relating to quick-drenching facilities for flushing of eyes and body, potable drinking water, clean and safe workplaces, warning signs, and barricades in areas where health and safety hazards exist, receptacles for disposal of waste food and associated matrial, marking and labeling toxic materials, prohibiting eating and drinking in toilets and areas exposed to toxic materials, and several other proposed health standards relating to radon daughters and radon gas, including the wearing of approved respirators, conducting gamma radiation surveys, and posting areas with radon daughters in excess of 1.0 WL against unauthorized entry and designating such areas by signs indicating that respirators must be worn.

The text of the listed proposals are like, but not identical with, their corresponding OSHA definitions and standards for several reasons. The main reasons for this difference in wording are as follows:

The listed proposals are designed primarily as performance-oriented standards. They are directed toward eliminating recognized hazards wherever practicable and neutralizing other hazards. They provide certain definite requirements that delineate the responsibilities of the mine operator to protect mine workers. The form and philosophy of the listed proposals are different from that used to develop OSHA standards. The listed proposals are generally short and concise statements that are readily understandable by persons working in the metal and nonmetal mining industries.

With the exception of listed proposals 40, 133, and 258, relating to quick-

drenching facilities, and proposal 224 concerning radon daughter concentrations in excess of 0.3 WL in underground mining operations, the language for each of the listed proposals are recommended to the Secretary of the Interior by the Federal Metal and Nonmetal Mine Safety Advisory Committee. The Advisory Committee members considered each definition and mandatory standard on the basis of recognized hazards in metal and nonmetal mining and the needs of workers in the metal and nonmetal mining industries. Thus, the vocabulary and wording recommended by by the Advisory Committee are designed specifically for metal and nonmetal mining operations by representatives of mine management, mine workers, and State agencies charged with health and safety responsibilities. The Secretary has adopted the language recommended to him for the listed proposals and so designated them by the letters "MNMSAC" under the rulemaking provisions of section 6 (a), (b), and (c) of the Federal Metal and Nonmetallic Mine Safety Act.

The requirements in listed proposals 40, 133, and 258, that quick-drenching facilities for flushing of the eyes and body must be available for immediate emergency use where injurious corrosive materials are used or handled, contain substantially the same language as the corresponding OSHA provision. The wording of the OSHA standard has been reorganized and restated to provide more concise standards. Listed proposal 224 applies to underground operations of underground mines where radon daughter concentrations in excess of 0.3 WL are found in active workings. This proposal, in effect, upgrades and expands the corresponding OSHA standard to provide protection equivalent to or more protection than the OSHA provision by requiring that radon daughter sampling equipment and a competent person to make radon daughter measurements are available on each shift, that alpha detectors be calibrated prior to initial use and thereafter at intervals not to exceed six months, and that the most recent calibration record for each instrument is to be kept with the instrument and available for inspection. Also, the procedure for sampling and calibrating the sampling equipment must be in accordance with section 14 of American National Standards Institute (ANSI) N-13.8-1973.

Interested persons may submit, on or before March 14, 1977, written data, views, arguments, and objections including a request for public hearing on those proposed mandatory standards not recommended by the Federal Metal and Nonmetallic Mine Safety Advisory Committee, to the Administrator, Mining Enforcement and Safety Administration, Department of the Interior, Room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

In consideration of the foregoing, it is proposed to amend Parts 55, 56, and 57 of Subchapter N, Chapter I, Title 30, Code of Federal Regulations, as set forth below.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 19, 1977.

RAYMOND A. PECK, Jr.,
Deputy Assistant Secretary of the Interior.

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

§ 55.2 [Amended]

A. Section 55.2 "Definitions" is proposed to be amended as follows:

1. It is proposed to add a definition of "Circuit breaker" as follows: Circuit breaker. MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

2. It is proposed to add a definition of "Conductor" as follows: Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

3. It is proposed to add a definition of "Insulated" as follows: Insulated. MNM SAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

4. It is proposed to add a definition of "Insulation" as follows: Insulation. MN MSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to disruptive discharge through the substance.

5. It is proposed to add a definition of "Overcurrent" as follows: Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

6. It is proposed to add a definition of "Overload" as follows: Overload. MNM SAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

7. It is proposed to add a definition of "Short circuit" as follows: Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 55.3 [Amended]

B. Section 55.3 "Ground control" is proposed to be amended as follows:

8. It is proposed to revise and renumber advisory standard 55.3-11 and make it mandatory as follows:

55.3-50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

9. It is proposed to add a new mandatory standard 55.3-51 as follows:

55.3-51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

10. It is proposed to add a new mandatory standard 55.3-52 as follows:

55.3-52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

11. It is proposed to add a new mandatory standard 55.3-53 as follows:

55.3-53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

12. It is proposed to add a new mandatory standard 55.3-54 as follows:

55.3-54 *Mandatory.* MNMSAC.—When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

13. It is proposed to add a new mandatory standard 55.3-55 as follows:

55.3-55 *Mandatory.* MNMSAC.—In installing point-anchor rock bolts: (a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

14. It is proposed to add a new mandatory standard 55.3-57 as follows:

55.3-56 *Mandatory.* MNMSAC.—Rock bolt hole drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

15. It is proposed to add a new mandatory standard 55.3-57 as follows:

55.3-57 *Mandatory.* MNMSAC.—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall: (a) Have hardness in the range of 35-45 HRC (Hardness Rockwell C Scale).

(b) Conform to the shape of the bolt head and bearing plate.

(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

16. It is proposed to add a new mandatory standard 55.3-58 as follows:

55.3-58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 55.9 [Amended]

C. Section 55.9 "Loading, hauling, dumping" is proposed to be amended as follows:

17. It is proposed to revoke advisory standard 55.9-18. MNMSAC.

18. It is proposed to revise advisory standard 55.9-35 and make it mandatory as follows:

55.9-35 *Mandatory.* MNMSAC. — Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

19. It is proposed to revise advisory standard 55.9-46 and make it mandatory as follows:

55.9-46 *Mandatory.* MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

20. It is proposed to revise advisory standard 55.9-56 and make it mandatory as follows:

55.9-56 *Mandatory.* MNMSAC. — Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

21. It is proposed to revise advisory standard 55.9-57 and make it mandatory as follows:

55.9-57 *Mandatory.* MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

22. It is proposed to add a new mandatory standard 55.9-72 as follows:

55.9-72 *Mandatory.* MNMSAC.—Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

23. It is proposed to add a new mandatory standard 55.9-73 as follows:

55.9-73 *Mandatory.* MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

§ 55.12 [Amended]

D. Section 55.12 "Electricity" is proposed to be amended as follows:

24. It is proposed to revise mandatory standard 55.12-1 as follows:

55.12-1 *Mandatory.*—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devices used to protect the equipment and circuits against overloads shall be backed up by short circuit protection.

25. It is propsed to revise mandatory standard 55.12-3 as follows:

55.12-3 *Mandatory.*—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

26. It is proposed to revise mandatory standard 55.12-5 as follows:

55.12-5 *Mandatory.* MNMSAC.—Mobile equipment shall not run over power conductors, nor shall loads be dragged over power conductors, unless the conductors are properly bridged or protected.

27. It is proposed to revise advisory standard 55.12-6 and make it mandatory as follows:

55.12-6 *Mandatory.* MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

28. It is proposed to revise advisory standard 55.12-8 and make it mandatory as follows:

55.12-8 *Mandatory.* MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

29. It is proposed to revise advisory standard 55.12-10 and make it mandatory as follows:

55.12-10 *Mandatory.* MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

30. It is proposed to revise mandatory standard 55.12-11 as follows:

55.12-11 *Mandatory.* MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

31. It is proposed to revise advisory standard 55.12-12 and make it mandatory as follows:

55.12-12 *Mandatory.* MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

32. It is proposed to revise advisory standard 55.12-13 and make it mandatory as follows:

55.12-13 *Mandatory.* MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be: (a) Mechanically strong with electrical conductivity as near as possible to that of the original,

(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and

(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

33. It is proposed to revise mandatory standard 55.12-14 as follows:

55.12-14 *Mandatory.* MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment if powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

34. It is proposed to revise mandatory standard 55.12-16 as follows:

55.12-16 *Mandatory.* MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

35. It is proposed to revise mandatory standard 55.12-28 as follows:

55.12-18 *Mandatory.* MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

36. It is proposed to revise advisory standard 55.12-34 and make it mandatory as follows:

55.12-34 *Mandatory.* MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

37. It is proposed to revise advisory standard 55.12-42 and make it mandatory as follows:

55.12-42 *Mandatory.* MNMSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replaced, or broken bonds are discovered, they shall be rebonded within three working shifts.

38. It is proposed to revoke advisory standard 55.12-70, and to revise advisory standard 55.12-69 and make it mandatory as follows:

55.12-69 *Mandatory.* MNMSAC.—Each ungrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

§ 55.15 [Amended]

E. Section 55.15 "Personal protection" is proposed to be amended as follows.

39. It is proposed to revise advisory standard 55.15–6 and make it mandatory as follows:

55.15–6 *Mandatory.* MNMSAC.—Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

40. It is proposed to add a new mandatory standard 55.15–14 as follows.

55.15–14 *Mandatory.*—Quick-drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

§ 55.19 [Amended]

F. Section 55.19 "Man hoisting" is proposed to be amended as follows:

41. It is proposed to revise mandatory standard 55.19–7 as follows:

55.19–7 *Mandatory.*—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices.

(a) The overtravel devices shall: (1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and

(3) Be provided with back-out switches.

(b) The overspeed devices shall: (1) Be directly driven from the hoist drum;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;

(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and

(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

42. It is proposed to revised advisory standard 55.19–8 and make it mandatory as follows:

55.19–8 *Mandatory.* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

43. It is proposed to revise advisory standard 55.19–11 and make it mandatory as follows:

55.19–11 *Mandatory. MNMAC.*—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

44. It is proposed to revise advisory standard 55.19–12 and make it mandatory as follows:

55.19–12 *Mandatory.* — Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the grooves of grooved drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

45. It is proposed to add a new mandatory standard 55.19–14 as follows:

55.19–14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

46. It is proposed to add a new mandatory standard 55.19–15 as follows:

55.19–15 *Mandatory.* — Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

47. It is proposed to add a new mandatory standard 55.19–16 as follows:

55.19–16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following:

(a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths ($\frac{3}{16}$) inch steel plate or of a noncombustible material having equivalent

(b) The cage or skip shall be provided with not less than one-eighth ($\frac{1}{8}$) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.

(1) The side casing shall extend to a height of not less than five feet from the floor.

(2) The side casing shall have no openings through which a three-eighths ($\frac{3}{8}$) inch diameter rod will pass, excepting those openings that are necessary for signaling.

(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.

(1) All doors shall have no openings through which a three-eighths ($\frac{3}{8}$) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.

(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.

(3) All doors shall be fitted with latches that will prevent accidental opening of a door.

(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.

(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged movable section weighing no more than 150 pounds may be considered as having escape hatches.

(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:

(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).

(2) Be performance tested before the conveyance is used to hoist men.

(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

48. It is proposed to add a new mandatory standard 55.19–17 as follows:

55.19–17 *Mandatory.* MNMSAC.—Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safely to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

49. It is proposed to add a new mandatory standard 55.19–18 as follows:

55.19–18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

50. It is proposed to revoke advisory standard 55.19–27 MNMSAC.

51. It is proposed to revise advisory standard 55.19–36 and make it mandatory as follows:

55.19–36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

52. It is proposed to revise advisory standard 55.19–37 and make it mandatory as follows:

55.19–37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

53. It is proposed to revise advisory standard 55.19–39 and make it mandatory as follows:

55.19–39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

Rope construction	*Diameter of sheaves and drum times rope diameter*
6X7 Classification	72
6X17 Seale	56
6X19 Seale	51
6X21 Filler wire	45
6X25 Filler wire	41
6X31	38
6X37	33
6X25 type B, flattened strand	45
6X27 type H, flattened strand	45
6X30 type G, flattened strand	45
8X29 Seale	36
8X19 Warrington	31
18X7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

54. It is proposed to revise advisory standard 55.19–40 and make it mandatory as follows:

55.19–40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

55. It is proposed to revise mandatory standard 55.19–50 as follows:

55.19-50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall:

(a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

56. It is proposed to revise mandatory standard 55.19-54 as follows:

55.19-54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

57. It is proposed to revise advisory standard 55.19-56 and make it mandatory as follows:

55.19-56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

58. It is proposed to revise advisory standard 55.19-57 and make it mandatory as follows:

55.19-57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the preceeding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

59. It is proposed to revoke advisory standard 55.19-60. MNMSAC.

60. It is proposed to revise advisory standard 55.19-61 and make it mandatory as follows:

55.19-61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

61. It is proposed to revise advisory standard 55.19-62 and make it mandatory as follows:

55.19-62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the deceleration shall not exceed 16 feet per second per second.

62. It is proposed to revise advisory standard 55.19-66 and make it mandatory as follows:

55.19-66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

63. It is proposed to revise advisory standard 55.19-67 and make it mandatory as follows:

55.19-67 *Mandatory.*—During shift changes, an authorized person shall be in charge of each man trip.

64. It is proposed to revise advisory standard 55.19-68 and make it mandatory as follows:

55.19-68 *Mandatory.* MNMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

65. It is proposed to revise advisory standard 55.19-72 and make it mandatory as follows:

55.19-72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

66. It is proposed to revise advisory standard 55.19-74 and make it mandatory as follows:

55.19-74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

67. It is proposed to revise advisory standard 55.19-76 and make it mandatory as follows:

55.19-76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

68. It is proposed to revise advisory standard 55.19-81 and make it mandatory as follows:

55.19-81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

69. It is proposed to add a new mandatory standard 55.19-83 as follows:

55.19-83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

70. It is proposed to revise advisory standard 55.19-91 and make it mandatory as follows:

55.19-91 *Mandatory.*—Hoistmen shall not accept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

71. It is proposed to revise advisory standard 55.19-93 and make it mandatory as follows:

55.19-93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

72. It is proposed to revise advisory standard 55.19-102 and make it mandatory as follows:

55.19-102 *Mandatory.* MNMSAC.—A means shall be provided to guide the movement of a shaft conveyance.

73. It is proposed to revise advisory standard 55.19-106 and make it mandatory as follows:

55.19-106 *Mandatory.* MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

74. It is proposed to revise advisory standard 55.19-111 and make it mandatory as follows:

55.19-111 *Mandatory.* MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

75. It is proposed to revise advisory standard 55.19-121 and make it mandatory as follows:

55.19-121 *Mandatory.* MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

76. It is proposed to revise advisory standard 55.19-122 and make it mandatory as follows:

55.19-122 *Mandatory.* MNMSAC.—Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

77. It is proposed to revise advisory standard 55.19-123 and make it mandatory as follows:

55.19-123 *Mandatory.* MNMSAC.—Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

78. It is proposed to revise advisory standard 55.19-124 and make it mandatory as follows:

55.19-124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

79. It is proposed to revise advisory standard 55.19-125 and make it mandatory as follows:

55.19-125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

80. It is proposed to revise advisory standard 55.19-126 and make it mandatory as follows:

55.19-126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

81. It is proposed to revoke advisory standard 55.19–127. MNMSAC.

82. It is proposed to revise advisory standard 55.19–130 and make it mandatory as follows:

55.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

83. It is proposed to revise advisory standard 55.19–130 and make it mantory as follows:

55.19–131 *Mandatory.*—Conveyance connections shall be inspected each day that they are in use.

84. It is proposed to revise advisory standard 55.19–132 and make it mandatory as follows:

55.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

85. It is proposed to revise advisory standard 55.19–133 and make it mandatory as follows:

55.19–133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

86. It is proposed to revise advisory standard 55.19–134 and make it mandatory as follows:

55.19–134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

87. It is proposed to revise advisory standard 55.19–135 and make it mandatory as follows:

55.19–135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair.

§ 55.20 [Amended]

G. Section 55.20 "Miscellaneous" is proposed to be amended as follows:

88. It is proposed to revise mandatory standard 55.20–2 as follows:

55.20–2 Mandatory. MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or back-siphonage of non-potable water.

89. It is proposed to revise advisory standard 55.20–3 and make it mandatory as follows:

55.20–3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

90. It is proposed to add a new mandatory standard 55.20–11 as follows:

55.20–11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

91. It is proposed to add a new mandatory standard 55.20–12 as follows:

55.20–12 *Mandatory.* MNMSAC.—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

92. It is proposed to add a new mandatory standard 55.20–13 as follows:

55.20–13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

93. It is proposed to add a new mandatory standard 55.20–14 as follows:

55.20–14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

§ 56.2 [Amended]

H. Section 56.2 "Definitions" is proposed to be amended as follows:

94. It is proposed to add a definition of "Circuit breaker" as follows:

Circuit breaker. MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

95. It is proposed to add a definition of "Conductor" as follows:

Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

96. It is proposed to add a definition of "Insulated" as follows:

Insulated. MNMSAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

97. It is proposed to add a definition of "Insulation" as follows:

Insulation. MNMSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to the disruptive discharge through the substance.

98. It is proposed to add a definition of "Overcurrent" as follows:

Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

99. It is proposed to add a definition of "Overload" as follows:

Overload. MNMSAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

100. It is proposed to add a definition of "Short circuit" as follows:

Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 56.3 [Amended]

1. Section 56.3 "Ground control" is proposed to be amended as follows:

101. It is proposed to revise and renumber advisory standard 56.3–11 and make it mandatory as follows:

56.3–50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

102. It is proposed to add a new mandatory standard 56.3–51 as follows:

56.3–51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

103. It is proposed to add a new mandatory standard 56.3–52 as follows:

56.3–52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

104. It is proposed to add a new mandatory standard 56.3–53 as follows:

56.3–53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the

strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

105. It is proposed to add a new mandatory standard 56.3–54 as follows:

56.3–54 *Mandatory.* MNMSAC. — When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

106. It is proposed to add a new mandatory standard 56.3–55 as follows:

56.3–55 *Mandatory.* MNMSAC.—In installing point-anchor rock bolts:

(a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

107. It is proposed to add a new mandatory standard 56.3–56 as follows:

56.3–56 *Mandatory.* MNMSAC.—Rock bolt hole drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

108. It is proposed to add a new mandatory standard 56.3–57 as follows:

56.3–57 *Mandatory.* MNMSAC.—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall:

(a) Have hardness in the range of 35–45 HRC (Hardness Rockwell C Scale).

(b) Conform to the shape of the bolt head and bearing plate.

(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

109. It is proposed to add a new mandatory standard 56.3–58 as follows:

56.3–58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 56.9 [Amended]

J. Section 56.9 "Loading, hauling, dumping" is proposed to be amended as follows:

110. It is proposed to revoke advisory standard 56.9–18. MNMSAC.

111. It is proposed to revise advisory standard 56.9–35 and make it mandatory as follows:

56.9–35 *Mandatory.* MNMSAC.—Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

112. It is proposed to revise advisory standard 56.9–46 and make it mandatory as follows:

56.9–46 *Mandatory.* MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

113. It is proposed to revise advisory standard 56.9–56 and make it mandatory as follows:

56.9–56 *Mandatory.* MNMSAC.—Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

114. It is proposed to revise advisory standard 56.9–57 and make it mandatory as follows:

56.9–57 *Mandatory.* MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

115. It is proposed to add a new mandatory standard 56.9–72 as follows:

56.9–72 *Mandatory.* MNMSAC.—Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

116. It is proposed to add a new mandatory standard 56.9–73 as follows:

56.9–73 *Mandatory.* MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

K. Section 56.12 "Electricity" is proposed to be amended as follows:

117. It is proposed to revise mandatory standard 56.12–1 as follows:

56.12–1 *Mandatory.*—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devices used to protect the equipment and circuits against overloads shall be backed up by short circuit protection.

118. It is proposed to revise mandatory standard 56.12–3 as follows:

56.12–3 *Mandatory.*—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

119. It is proposed to revise mandatory standard 56.12–5 as follows:

56.12–5 *Mandatory.* MNMSAC.—Mobile equipment shall not run over power conductors, nor shall load be dragged over power conductors, unless the conductors are properly bridged or protected.

120. It is proposed to revise advisory standard 56.12–6 and make it mandatory as follows:

56.12–6 *Mandatory.* MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

121. It is proposed to revise advisory standard 56.12–8 and make it mandatory as follows:

56.12–8 *Mandatory.* MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

122. It is proposed to revise advisory standard 56.12–10 and make it mandatory as follows:

56.12–10 *Mandatory.* MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

123. It is proposed to revise mandatory standard 56.12–11 as follows:

56.12–11 *Mandatory.* MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

124. It is proposed to revise advisory standard 56.12–12 and make it mandatory as follows:

56.12–12 *Mandatory.* MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

125. It is proposed to revise advisory standard 56.12–13 and make it mandatory as follows:

56.12–13 *Mandatory.* MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

(a) Mechanically strong with electrical conductivity as near as possible to that of the original,

(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and

(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

126. It is proposed to revise mandatory standard 56.12–14 as follows:

56.12–14 *Mandatory.* MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

127. It is proposed to revise mandatory standard 56.12–16 as follows:

56.12–16 *Mandatory.* MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individ-

uals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

128. It is proposed to revise mandatory standard 56.12–28 as follows:

56.12–28 *Mandatory.* MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

129. It is proposed to revise advisory standard 56.12–34 and make it mandatory as follows:

56.12–34 *Mandatory.* MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

130. It is proposed to revise advisory standard 56.12–42 and make it mandatory as follows:

56.12–42 *Mandatory.* MNMSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replace, or broken bonds are discovered, they shall be re-bonded within three working shifts.

131. It is proposed to revoke advisory standard 56.12–70, and to revise advisory standard 56.12–69 and make it mandatory as follows:

56.12–69 *Mandatory.* MNMSAC.—Each ungrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be conducted to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

§ 56.15 [Amended]

L. Section 56.15 "Personal protection" is proposed to be amended as follows:

132. It is proposed to revise advisory standard 56.15–6 and make it mandatory as follows:

56.15–6 *Mandatory.* MNMSAC.—Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

133. It is proposed to add a new mandatory standard 56.15–14 as follows:

46.15–14 *Mandatory.*—Quick-drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

M. Section 56.19 Man hoisting is proposed to be amended as follows:

134. It is proposed to revise mandatory standard 56.19–7 as follows:

56.19–7 *Mandatory.*—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices:

(a) The overtravel devices shall:

(1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and

(3) Be provided with back-out switches.

(b) The overspeed devices shall:

(1) Be directly driven from the hoist drum;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;

(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and

(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

135. It is proposed to revise advisory standard 56.19–8 and make it mandatory as follows:

56.19–8 *Mandatory* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

136. It is proposed to revise advisory standard 56.19–11 and make it mandatory as follows:

56.19–11 *Mandatory.* MNMSAC.—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

137. It is proposed to revise advisory standard 56.19–12 and make it mandatory as follows:

56.19–12 *Mandatory.*—Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the grooves of grooved drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

138. It is proposed to add a new mandatory standard 56.19–14 as follows:

56.19–14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

139. It is proposed to add a new mandatory standard 56.19–15 as follows:

56.19–15 *Mandatory.*—Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

140. It is proposed to add a new mandatory standard 56.19–16 as follows:

56.19–16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following:

(a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths ($^3/_{16}$) inch steel plate or of a noncombustible material having equivalent strength.

(b) The cage or skip shall be provided with not less than one-eighth ($^1/_8$) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.

(1) The side casing shall extend to a height of not less than five feet from the floor.

(2) The side casing shall have no openings through which a three-eighths ($^3/_8$) inch diameter rod will pass, excepting those openings that are necessary for signaling.

(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.

(1) All doors shall have no openings through which a three-eighths ($^3/_8$) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.

(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.

(3) All doors shall be fitted with latches that will prevent accidental opening of a door.

(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.

(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged moveable section weighing no more than 150 pounds may be considered as having escape hatches.

(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:

(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).

(2) Be performance tested before the conveyance is used to hoist men.

(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

141. It is proposed to add a new mandatory standard 56.19–17 as folows:

56.19–17 *Mandatory.* MNMSAC.— Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safely to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

142. It is proposed to add a new mandatory standard 56.19–18 as follows:

56.19–18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

143. It is proposed to revoke advisory standard 56.19–27. MNMSAC.

144. It is proposed to revise advisory standard 56.19-35 and make it mandatory as follows:

56.19-36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

145. It is proposed to revise advisory standard 56.19-37 and make it mandatory as follows:

56.19-37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

146. It is proposed to revise advisory standard 56.19-39 and make it mandatory as follows:

56.19-39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

Rope construction:	*Diameter of sheaves and drum times rope diameter*
6×7 Classification	72
6×17 Seale	56
6×19 Seale	51
6×21 Filler wire	45
6X25 Filler wire	41
6X31	38
6×37	33
6×25 type B, flattened strand	45
6×27 type H, flattened strand	45
6×30 type G, flattened strand	45
8×29 Seale	36
8×19 Warrington	31
18×7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

147. It is proposed to revise advisory standard 56.19-40 and make it mandatory as follows:

56.19-40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

148. It is proposed to revise mandatory standard 56.19-50 as follows:

56.19-50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall:

(a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

149. It is proposed to revise mandatory standard 56.19-54 as follows:

56.19-54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

150. It is proposed to revise advisory standard 56.19-56 and make it mandatory as follows:

56.19-56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

151. It is proposed to revise advisory standard 56.19-57 and make it mandatory as follows:

56.19-57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the preceeding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

152. It is proposed to revoke advisory standard 56.19-60. MNMSAC.

153. It is proposed to revise advisory standard 56.19-61 and make it mandatory as follows:

56.19-61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

154. It is proposed to revise advisory standard 56.19-62 and make it mandatory as follows:

56.19—62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the deceleration shall not exceed 16 feet per second per second.

155. It is proposed to revise advisory standard 56.19-66 and make it mandatory as follows:

56.19-66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

156. It is proposed to revise advisory standard 56.19-67 and make it mandatory as follows:

56.19-67 *Mandatory*—During shift changes, an authorized person shall be in charge of each man trip.

157. It is proposed to revise advisory standard 56.19-68 and make it mandatory as follows:

56.19-68 *Mandatory.* MMMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

158. It is proposed to revise advisory standard 56.19-72 and make it mandatory as follows:

56.19-72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

159. It is proposed to revise advisory standard 56.19-74 and make it mandatory as follows:

56.19-74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

160. It is proposed to revise advisory standard 56.19-76 and make it mandatory as follows:

56.19-76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

161. It is proposed to revise advisory standard 56.19-81 and make it mandatory as follows:

56.19-81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

162. It is proposed to add a new mandatory standard 56.19-83 as follows:

56.19-83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

163. It is proposed to revise advisory standard 56.19-91 and make it mandatory as follows:

56.19-91 *Mandatory.*—Hoistmen shall not accept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

164. It is proposed to revise advisory standard 56.19-93 and make it mandatory as follows:

56.19-93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

165. It is proposed to revise advisory standard 56.19-102 and make it mandatory as follows:

56.19-102 *Mandatory.* MNMSAC.—A means shall be provided to guide the movement of a shaft conveyance.

166. It is proposed to revise advisory standard 56.19-106 and make it mandatory as follows:

56.19-106 *Mandatory.* MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

167. It is proposed to revise advisory standard 56.19-111 and make it mandatory as follows:

56.19-111 *Mandatory.* MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

168. It is proposed to revise advisory standard 56.19-121 and make it mandatory as follows:

56.19–121 *Mandatory.* MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

169. It is proposed to revise advisory standard 56.19–122 and make it mandatory as follows:

56.19–122 *Mandatory.* MNMSAC.—Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

170. It is proposed to revise advisory standard 56.19–123 and make it mandatory as follows:

56.19–123 *Mandatory.* MNMSAC.—Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

171. It is proposed to revise advisory standard 56.19–124 and make it mandatory as follows:

56.19–124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

172. It is proposed to revise advisory standard 56.19–125 and make it mandatory as follows:

56.19–125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

173. It is proposed to revise advisory standard 56.19–126 and make it mandatory as follows:

56.19–126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

174. It is proposed to revoke advisory standard 56.19–127. MNMSAC.

175. It is proposed to revise advisory standard 56.19–130 and make it mandatory as follows:

56.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

176. It is proposed to revise advisory standard 56.19–131 and make it mandatory as follows:

56.19–131 *Mandatory.*—Conveyance connections shall be inspected each day that they are in use.

177. It is proposed to revise advisory standard 56.19–132 and make it mandatory as follows:

56.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

178. It is proposed to revise advisory standard 56.19–133 and make it mandatory as follows:

56.19–133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

179. It is proposed to revise advisory standard 56.19–134 and make it mandatory as follows:

56.19–134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

180. It is proposed to revise advisory standard 56.19–135 and make it mandatory as follows:

56.19–135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair. N. Section 56.20 "Miscellaneous" is proposed to be amended as follows:

181. It is proposed to revise mandatory standard 56.20–2 as follows:

56.20–2 *Mandatory.* MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or back-siphonage of non-potable water.

182. It is proposed to revise advisory standard 56.20–3 and make it mandatory as follows:

56.20–3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

183. It is proposed to add a new mandatory standard 56.20–11 as follows:

56.20–11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

184. It is proposed to add a new mandatory standard 56.20–12 as follows:

56.20–12 *Mandatory.* MNMSAC.—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

185. It is proposed to add a new mandatory standard 56.20–13 as follows:

56.20–13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

186. It is proposed to add a new mandatory standard 56.20–14 as follows:

56.20–14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

PART 57—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

§ 57.2 [Amended]

O. Section 57.2 "Definitions" is proposed to be amended as follows:

187. It is proposed to add a definition of "Attended equipment" which is applicable to Part 57 only as follows:

Attended equipment. MNMSAC.—"Attended equipment" means any machine or device regularly operated by a miner assigned to operate such machine or device, or any machine or device which is mounted in a direct line of sight of a jobsite which is located within 500 feet of such machine or device, and which jobsite is regularly occupied by a miner assigned to perform job duties at such jobsite during each production shift.

188. It is proposed to add a definition of "Circuit breaker" as follows:

"Circuit breaker" MNMSAC.—"Circuit breaker" means a device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent setting without injury to itself when properly applied within its rating.

189. It is proposed to add a definition of "Conductor" as follows:

Conductor. MNMSAC.—"Conductor" means a material, usually in the form of a wire, cable, or bus bar, capable of carrying an electric current.

190. It is proposed to add a definition which is applicable to Part 57 only as follows:

Fire door. MNMSAC.—"Fire door" means an openable closure for a passageway, shaft or other mine opening to serve as barrier to fire, the effects of fire, and air leakage. A fire door shall have a fire resistance rating of 1½ hours or greater and, on exposure to fire on one side for 30 minutes, the temperature on the unexposed side shall not exceed 250° F, as determined by a nationally

recognized testing agency in accordance with "Standard Method of Fire Tests of Door Assemblies", National Fire Protection Association (NFPA) Code No. 252, 1972, or equivalent. The framework assembly of a fire door and the surrounding bulkhead, if any, shall be at least equivalent to the fire door in fire and air-leakage resistance, and in physical strength. NFPA Code No. 252 is hereby incorporated by reference and made a part hereof. This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

191. It is proposed to add a definition of "Insulated" as folows:

Insulated. MNMSAC.—"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

192. It is proposed to add a definition of "Insulation" as follows:

Insulation. MNMSAC.—"Insulation" means a dielectric substance offering a high resistance to the passage of current and to disruptive discharge through the substance.

193. It is proposed to add a definition of "Overcurrent" as follows:

Overcurrent. MNMSAC.—"Overcurrent" means an abnormal current that is greater than the full load value of the circuit.

194. It is proposed to add a definition of "Overload" as follows:

Overload. MNMSAC.—"Overload" means that current which will cause an excessive or dangerous temperature in the conductor or conductor insulation.

195. It is proposed to add a definition of "Short circuit" as follows:

Short circuit. MNMSAC.—"Short circuit" means an abnormal connection of relatively low resistance, whether made accidentally or intentionally, between two points of different potential in a circuit.

§ 57.3 [Amended]

P. Section 57.3 "Ground control" is proposed to be amended as follows:

196. It is proposed to revoke advisory standard 57.3–25 and revise advisory standard 57.3–26 which is applicable to underground only and make it mandatory as follows:

57.3–26 *Mandatory.* MNMSAC.—Timbers used for support of ground in active workings shall be set, blocked and/or wedged so that a tight fit is achieved. Damaged, loosened, or dislodged timbers which create a hazardous condition shall be promptly repaired or replaced.

197. It is proposed to revise advisory standard 57.3–33 which is applicable to underground only and make it mandatory as follows:

57.3–33 *Mandatory. MNMSAC.*—Calibrated torque meters or torque wrenches shall be available at mines where rock bolts are used for ground control. Periodic tests shall be made to determine the torque meter or torque wrench accuracy.

198. It is proposed to add a new mandatory standard 57.3–34 which is applicable to underground only as follows:

57.3–34 *Mandatory.*—Each operator shall develop and set out in written form a ground control plan suitable to the current conditions and mining systems or proposed mining systems of the mine. Within 45 calendar days after promulgation of this standard, a copy of the plan and any revisions thereof shall be submitted for approval to the Secretary or his authorized representative. Upon approval the plan shall be adopted by the operator. Each approved and adopted plan shall be updated as necessary and each updated plan shall be submitted for approval to the Secretary or his authorized representative. Upon approval the updated plan shall be adopted by the operator. Each approved plan or updated plan shall be reviewed jointly by the operator and the Secretary or his authorized representative at least every twelve months from the last date of approval.

The ground control plan shall include where applicable:

(a) A general description of the structural geology of the mine including location, orientation, and geologic description of major structural defects.

(b) A mine map showing a plan view of each level in the mine and identifying all workings and their elevations.

(c) A description of the mining method(s) and/or procedure(s) used. Included would be:

(1) Dimensions and shape(s) of planned and designed openings;

(2) Chronology of ongoing development and mining, including the time delay between creation of an unsupported opening and installation of support; and

(3) Method of rock breakage including depth of round, spacing and angling of drill holes, explosives used, powder factor, and type of detonator and primer.

(d) The methods and procedures for installing permanent or temporary support. Information shall include:

(1) The support type, e.g., rock bolting, timbering, backfill;

(2) Normally planned spacing of support units;

(3) Step-by-step description of installation procedures;

(4) Parameters of preparation and fit which are to be followed to insure maximum support; and

(5) Equipment used in the installation and testing of rock bolts.

(e) A listing of and specifications for materials used for artificial support. Dimensions, quality, and rated strengths of such materials shall be given. Materials and mixes thereof utilized in the composition of sealants, sprayed concretes, grouts, or backfill should be described relative to quality, shelf life, and in-place strengths.

(f) Scaling methods, procedures, and equipment. Required information includes:

(1) The technique and practice to be followed by workers during scaling done as a part of the normal mining cycle;

(2) Methods and procedures to conduct scaling operations as a part of repair and salvage of damaged walls and backs of mine openings; and

(3) A listing of types of equipment used specifically for scaling.

(g) Policy and practice to be followed in the supervision of scaling operations and inspection for loose ground and unsafe working conditions in back, face, and ribs of working places.

(h) Method(s) for monitoring ground movement including types of instruments to be used together with their sensitivities and ranges; the frequency of readings; and the relationship between the extent of movement and fall-of-ground hazards.

(i) Proposed training. Plans shall be specified for training all persons engaged in scaling and in ground support installation and operation of related mining equipment.

(j) Method of company official reporting and recording of failures and falls of ground. Information shall include the type, magnitude, and cause, when possible, of a fall of ground or support failure, and the remedial action to be taken.

199. It is proposed to add a new mandatory standard 57.3–35 which is applicable to underground only as follows:

57.3–35 *Mandatory.* MNMSAC.—Operators of mines that have experienced rock bursts within the mine shall develop a comprehensive rock burst detection plan applicable to current conditions in that mine within 90 days after promulgation of this standard or, thereafter, within 90 days after a rock burst has been experienced. This plan shall be updated from time to time as conditions and available technology warrant. This comprehensive rock burst detection plan shall be available to the Secretary or his designated representative and to mine employees.

200. It is proposed to reserve numbers 57.3–36 through 57.3–49, and to add a new center subheading in section 57.3 as follows:

(a) Numbers 57.3–36 through 57.3–49 under the present center subheading are reserved.

(b) A new center subheading entitled "General—Surface and Underground" immediately below the reserved numbers 57.3–36 through 57.3–49.

As proposed the reserved standard numbers and center subheadings will read as follows:

* * * * *

UNDERGROUND ONLY

* * * * *

57.3–36 through 57.3–49 [Reserved].

GENERAL—SURFACE AND UNDERGROUND

* * * * *

201. It is proposed to revise and renumber advisory standard 57.3–11 which is applicable to surface and underground and make it mandatory as follows:

57.3–50 *Mandatory.* MNMSAC.—Material, other than hanging material, to be broken by secondary drilling and blasting, or by any other method shall be positioned or blocked to prevent hazardous movement before persons commence breaking operations. Persons who perform those operations shall work from a location where, if movement of material occurs, those persons will not be endangered.

202. It is proposed to revoke advisory standards 57.3–23 and 57.3–24 and to add a new mandatory standard 57.3–51 which is applicable to surface and underground as follows:

57.3–51 *Mandatory.* MNMSAC.—A scaling bar of sufficient length to place the user out of danger of falling material shall be provided at each working place, where manual scaling may be required. The scaling bar shall be blunt on one end. Picks or other short tools shall not be used for scaling when their use places the user in danger of falling material.

203. It is proposed to revoke advisory standard 57.3–32 and add a new mandatory standard 57.3–52 which is applicable to surface and underground as follows:

57.3–52 *Mandatory.*—When rock bolting is a part of the mining cycle, rock bolts shall be installed as soon as possible after an area is exposed. Blasting shall be scheduled so that a minimal time will elapse between exposure of ground by blasting and installation of bolts.

204. It is proposed to add a new mandatory standard 57.3–3 which is applicable to surface and underground as follows:

57.3–53 *Mandatory.* MNMSAC.—Rock-bolt installation requiring torquing shall be torqued to a value within the range determined from information of tests in the strata in which the rock bolt assembly is used. In no case shall installation torques cause bolt tensions that would exceed the yield point or anchorage capacity of the rock bolt assembly being used.

205. It is proposed to add a new mandatory standard 57.3–54 which is applicable to surface and underground as follows:

57.3–54 *Mandatory.* MNMSAC.—When rock bolts are used as a means of ground support, anchorage pull-test procedures shall be established and tests shall be conducted to determine anchorage capacity of rock-bolt installations. Test results shall be set forth in writing and made available to the Secretary or his duly authorized representative.

206. It is proposed to add a new mandatory standard 57.3–55 which is applicable to surface and underground as follows:

57.3–53 *Mandatory.* MNMSAC.—Rock-bolt stalling point-anchor rock bolts:

(a) A torque test shall be conducted on at least every fourth installed bolt.

(b) Torque testing shall be conducted immediately after bolt installation.

(c) If the recommended torque has not been achieved, the equipment used to install the bolt shall be adjusted and the next bolt installed shall then be tested.

(d) If the recommended torque has not been achieved on the majority of bolts installed in a working place through equipment adjustment, supplemental support such as longer roof bolts with adequate anchorage, steel or wood sets, or cribs shall be installed.

207. It is proposed to add a new mandatory standard 57.3–56 which is applicable to surface and underground as follows:

57.3–56 *Mandatory.* MNMSAC.—Rock bolt hole-drill bits shall be easily identifiable by sight or feel and diameters shall be within a tolerance of ±0.030-inches of the manufacturer's recommended hole diameter for the anchor used.

208. It is proposed to add a new mandatory standard 57.3–57 which is applicable to surface and underground as follows:

57.3–57 *Mandatory. MNMSAC.*—Washers if used in rock-bolt assemblies to reduce friction between the bolt head and the bearing plate shall:

(a) Have hardness in the range of 35–45 HRC (Hardness Rockwell C Scale).

(b) Conform to the shape of the bolt head and bearing plate.

(c) Have sufficient strength to withstand loads up to the yield point of the rock bolt.

209. It is proposed to add a new mandatory standard 57.3–58 which is applicable to surface and underground as follows:

57.3–58 *Mandatory.*—Alignment compensating devices shall be placed between the bolt head and the bearing plate where the angle between the bolt axis and the normal to (perpendicular) the bearing plate surface is more than 5 degrees.

§ 57.4 [Amended]

Q. Section 57.4 "Fire prevention" and control is proposed to be amended as follows:

210. It is proposed to revise advisory standard 57.4–66 which is applicable to underground only and make it mandatory as follows:

57.4–66 *Manadatory.* — Automatically-actuated fire-suppression systems shall be installed at all conveyor belt drives, (including the drive motor, controls, reducing gears, and take-up units) and extend 50 feet along the conveyor belt from the drive drum for a flame-resistant belt which shall be approved under Part 18 of Title 30, or 150 feet for a nonflame-resistant belt.

211. It is proposed to add a new mandatory standard 57.4–87 which is applicable to underground only as follows:

57.4–87 *Mandatory.*—All attended internal-combustion engine-driven equipment shall be equipped with an installed fire-suppression system.

212. It is proposed to add a new mandatory standard 57.4–88 which is applicable to underground only as follows:

57.4–88 *Mandatory.*—All attended electrically powered equipment which uses nonfire-resistant hydraulic fluid shall be equipped with an installed fire-suppression system.

213. It is proposed to add a new mandatory standard 57.4–89 which is applicable to underground only as follows:

57.4–89 *Mandatory.* MNMSAC.—Unattended diesel-operated equipment shall be provided with an automatically-actuated fire-suppression system.

214. It is proposed to add a new mandatory standard 57.4–90 which is applicable to underground only as follows:

57.4–90 *Mandatory.* MNMSAC.—Unattended electric motors rated at 60 hp or more, or unattended electric motors of less than 60 hp associated with equivalents of one gallon or more of combustible liquid, 50 pounds of nonfire-retardant treated wood, or 10 pounds of plastic material shall be provided with an automatically-actuated fire-suppression system.

215. It is proposed to add a new mandatory standard 57.4–91 which is applicable to underground only as follows:

57.4–91 *Mandatory.* MNMSAC.—Automatically-actuated fire-suppression systems on unattended equipment shall meet the following criteria:

(a) Fire-suppression system; approved components; installation requirements:

(1) The components of each fire-suppression system shall be listed as approved by Factory Mutual Engineering Corporation or Underwriters Laboratories, Inc., or approved by the Secretary.

(2) Where used, pressure vessels shall be designed and constructed in accordance with one of the following: Nationally recognized testing laboratory standard, e.g., Underwriters Laboratories, Inc.; Federal agency standard, e.g., Department of Transportation; or American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (1971).

(3) The cover of hose installed in fire-suppression systems, after the effective date of this standard, shall meet the flame-resistant requirements of Section 18.65, Part 18 of Title 30.

(4) Fire-suppression systems shall, where appropriate, be installed in accordance with the manufacturer's specifications.

(b) Sensors' requirements, and installation:

(1) Where fire-suppression devices are installed, one or more point-type sensors or equivalent shall be installed for each 50 square feet or fraction thereof of top surface area of such equipment. Each such sensor shall be designed to activate the fire-suppression system and to disconnect the electrical power source or to stop the internal combustion engine power to the equipment protected; and, except where sprinklers are used, there shall be in addition, a manual actuator installed to operate the fire-suppression system. Where sprinklers are used, provision shall also be made for manual application of water to the protected equipment.

(2) Sensors, where practicable, shall be installed in accordance with the recommendations set forth in National Fire Code No. 72A, "Local Protective Signaling Systems" (NFPA No. 72A–1974).

(3) If electrically operated sensors are used in fire-suppression systems, they shall operate independently of power to the main motor (or equivalent) or contain a standby power source so that the fire-suppression system will remain operative for at least four hours if the circuit breakers (or other protective devices) actuate.

(4) Sensor systems shall include a device or method for determining their operative condition.

(c) Capacity of fire-suppression devices; location and direction of nozzles;

(1) Each fire-suppression device shall be:

A. Adequate in size and capacity to extinguish potential fires in or on the equipment protected; and

B. Suitable for the atmospheric conditions surrounding the equipment protected (e.g., air velocity, type, and proximate combustible material); and

C. Rugged enough to withstand rough usage and vibration.

(2) The extinguishant-discharge nozzle of each fire-suppression system where practicable, shall be located so as to take advantage of mine ventilation air currents. The fire-suppression system may be of the internal injection, inundating, or combination type. Where fire control is achieved by internal injection, and inundation, hazardous locations shall be enclosed to minimize runoff and over-shoot of the extinguishing agent.

(d) Fire-suppression systems; water supply systems requirements:

(1) Fire-suppression systems using water or liquid chemical to protect unattended equipment shall:

A. Be limited to a pressure consistent with the pipe fittings, valves, and nozzles used in the system.

B. Be located so as to be protected against damage during operation of the equipment protected.

C. Employ liquid which is free from excessive sediment and is noncorrosive to the system.

D. Include strainers equipped with flushout connections or equivalent protective devices and a rising stem or other visual-indicator-type shut-off valve.

(2) Water for fire-suppression systems installed on underground equipment may be supplied from mounted water tanks or by connection to water mains. Such water supplies shall be continuously connected to the fire-suppression system whenever the equipment is connected to a power source.

(e) Water spray systems: capacity, water supply minimum requirements:

(1) Where water spray systems are used the rate of flow shall be at least 0.25 gallon per minute per square foot over the top surface area of the equipment and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(2) Liquid chemical, if used, shall be nontoxic, and when applied to fire shall not produce excessive toxic compounds. The quantity of liquid chemicals required shall be proportionately less than water as based on equivalency ratings made by a nationally-recognized testing agency acceptable to the Secretary.

(f) Dry chemical systems: capacity and minimum requirements:

Dry chemical fire extinguishing systems used on underground equipment shall be of the multipurpose powder type and shall include:

(1) The system, including all hose and nozzles, shall be protected against the entrance of moisture, dust, or dirt;

(2) The system shall be guarded against damage during operation of the equipment protected;

(3) Hose and pipe shall be as short as possible; the distance between the chemical container and furthest nozzle shall not exceed 50 feet;

(4) Hose, piping, and fittings between the actuator and the chemical container shall have a bursting pressure of 500 pounds per square inch (gage) or higher; the hose, piping, and fittings between the chemical container and the nozzles shall have a bursting pressure of 300 pounds per square inch (gage) or higher; and

(5) The system shall discharge in 1 minute or less, for quantities less than 50 pounds (nominal) [1] and in less than 2 minutes for quantities more than 50 pounds.

(6) On unattended underground equipment, the number of pounds of dry chemical employed by the system shall be not less than 1 pound per square foot of top surface area of the equipment; however, the minimum amount in any system shall be 20 pounds (nominal). The discharge shall be directed into and on potentially hazardous locations of the equipment.

(g) High expansion foam systems; minimum capacity requirements:

On unattended underground equipment, the amount of water delivered as high expansion foam for a period of approximately 20 minutes shall be not less than 0.06 gallon per minute per square foot of surface area of the equipment protected; provided, however, the minimum total rate for any system shall be not less than 3 gallons per minute.

(h) Inerting of mine atmosphere by total flooding prohibited:

No fire suppression device designed to control fire by total flooding with an inert gas shall be installed to protect unattended underground equipment except in enclosed dead-end entries or enclosed rooms.

(i) Fire-suppression systems; hazards; training of miners:

Each operator shall instruct all miners normally assigned to the active workings of the mine with respect to any hazards inherent in the operation of all fire-suppression systems used in those workings and, where appropriate, the safeguards available at each such installation.

(j) Inspection of fire-suppression systems:

(1) All fire-suppression systems shall be visually inspected at least once each week by a person competent to make such inspections.

(2) Each fire-suppression system shall be tested and maintained in accordance with the requirements specified in the appropriate National Fire Code listed for the type and kind of device used as follows:

National Fire Code No. 11A "High Expansion Foam Systems" (NFPA No. 11A–1970).

National Fire Code No. 13 "Installation of Sprinkler Systems" (NFPA No. 13–1974).

National Fire Code No. 15 "Water Spray Fixed Systems" (NFPA No. 15–1973).

National Fire Code No. 17 "Dry Chemical Systems" (NFPA No. 17–1973).

National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974).

National Fire Code No. 198 "Care of Fire Hose" (NFPA No. 198–1972).

(3) A record of the inspections required by this section shall be maintained by the operator. The record of the weekly inspections shall be maintained at an appropriate location near each fire-suppression system.

(k) Incorporation by reference; availability of publications

Publications to which references are made in this standard are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Metal and Nonmetal Mine Health and Safety Subdistrict Office of the Mining Enforcement and Safety Administration. National Fire Codes may be purchased from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210. The Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, 345 East 47th St., New York, NY 10017.

216. It is proposed to add a new mandatory standard 57.4–92 which is applicable to underground only as follows;

57.4–92 *Mandatory.* MNMSAC.—Fire-suppression systems on attended equipment shall meet the following criteria.

(a) Fire-suppression system, approved components, installation requirements are as follows:

(1) The components of each fire-suppression system, where appropriate, shall be listed as approved by Factory Mutual Engineering Corporation or Underwriters Laboratories or approved by the Secretary.

(2) Where used, pressure vessels shall be designed and constructed in accordance with one of the following: nationally recognized testing laboratory standard, e.g., Underwriters Laboratories, Inc.; Federal agency standard, e.g., Department of Transportation; or American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (1971).

(3) The cover of hose installed in fire-suppression systems after the effective date of this standard shall meet the flame-resistant requirements of Section 18–65, Part 18 of Title 30.

(4) Two or more manual actuators, where practicable, shall be installed, as provided in subdivisions (5) and (6) of this subparagraph, to activate a fire-suppression system on attended equipment purchased on or after the effective date of this standard. At least one manual actuator shall be used on equipment purchased prior to the effective date of this standard.

(5) Manual actuators shall be located at different locations on the equipment, and at least one manual actuator shall be located within easy reach of the operator's normal operating position.

(6) Manual actuators to activate fire-suppression devices on attended equipment not regularly operated by a miner shall be installed at different locations, and at least one manual actuator shall be installed so as to be easily reached by the miner at the job site or by persons approaching the equipment.

(7) Where sprinklers are used, provisions shall be made for manual application of water to protected equipment in lieu of a manual actuator.

(b) Sensors: requirements and installation are as follows:

(1) Sensors, where practicable, shall be installed in accordance with the recommendations set forth in National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974). On attended equipment powered through a trailing cable, the fire-suppression system shall operate independently of the electrical power provided by the cable.

(2) Point-type sensors (such as thermocouple, bimetallic strip, or rate of temperature rise) located in ventilated passageways shall be installed downwind from the equipment to be used.

(3) Sensor systems shall include a device or method for determining their operative condition.

(c) Capacity of fire-suppression devices; location and direction of nozzles are as follows:

(1) Each fire-suppression device shall be:

A. Adequate in size and capacity to extinguish potential fires in or on the equipment protected; and

B. Suitable for the atmospheric conditions surrounding the equipment protected (such as air velocity, type, and proximity of adjacent combustible material); and

C. Rugged enough to withstand rough usage and vibration when installed on mining equipment.

(2) The extinguishant-discharge nozzle of each fire-suppression system, where practicable, shall be located so as to take advantage of mine ventilation air currents. The fire-suppression system may be of the internal injection, inundating, or combination type. Where fire control is achieved by internal injection, or combination of internal injection and inundation, hazardous locations shall be enclosed to minimize runoff and over-shoot of the extinguishing agent; the extinguishing agent shall be directed onto:

A. Cable reel compartments and electrical cables on the equipment which are subject to flexing or to external damage; and

B. All hydraulic components on the equipment which are exposed directly to or located in the immediate vicinity of electrical cables which are subject to flexing or to damage.

(d) Water spray systems; capacity; water supply; minimum requirements are as follows:

[1] The word "nominal" is used in this standard to express the approximate weight in pounds of all-purpose dry chemical (ammonium dihydrogen phosphate) because the density of the all-purpose dry chemical is less than the density of sodium bicarbonate; a system originally designed for 50 pounds of sodium bicarbonate will not hold quite 50 pounds of all-purpose dry chemical.

(1) Where water spray systems are used for inundating attended underground equipment the rate of flow shall be at least 0.18 gallon per minute per square foot over the top surface area of the equipment (excluding conveyors, cutters, and gathering heads), and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(2) Where water is used for internal injection on attended equipment the total quantity of water shall be at least 4.5 gallons times the number of hazardous locations. The rate of flow shall be not less than 7 gallons per minute.

(3) Where water is used in a combination internal injection and inundation system on attended equipment, the rate of flow shall be at least 0.12 gallon per minute per square foot over the top surface area of the equipment (excluding conveyors, cutters, and gathering heads), and the supply of water shall be adequate to provide the required flow of water for 10 minutes.

(4) On equipment provided with a cable reel and an internal injection or combination-type system, the amount of water discharged into the cable reel compartments shall be approximately 25 percent of the amount required to be discharged by the system, however, such quality need not exceed 10 gallons.

(5) Liquid chemical may be used in self-contained fire-suppression systems. Such liquid chemicals shall be nontoxic and when applied to a fire shall not produce excessive toxic compounds. The quantity of liquid chemicals required shall be proportionately less than water as based on equivalency ratings made by a nationally recognized agency approved by the Secretary.

(e) Fire-suppression systems; extinguishant supply systems are as follows:

(1) Fire-suppression systems using water or liquid chemical to protect attended equipment shall:

A. Be limited to a pressure consistent with the pipe, fittings, valves, and nozzles used in the system.

B. Be located so as to be protected against damage during operation of the equipment protected.

C. Employ liquid which is free from excessive sediment and noncorrosive to the system.

D. Include strainers equipped with flush-out connections or equivalent protective devices and a rising stem or other visual indicator-type shutoff valve.

(2) Water supplies for fire-suppression system installed on underground equipment may be maintained in mounted water tanks or by connection to water mains. Such water supplies shall be continuously connected to the fire-suppression system whenever the equipment is connected to a power source, except for a reasonable time for changing hose connections to hydrants while the machine is stopped in a ventilated passageway.

(f) Dry chemical systems; capacity; minimum requirements are as follows:

(1) Dry chemical fire extinguishing systems used on underground equipment shall be of the multipurpose powder-type and shall include the following:

A. The system including all hose and nozzles shall be protected against the entrance of moisture, dust, or dirt;

B. The system shall be guarded against damage during operation of the equipment protected;

C. Hose and pipe shall be as short as possible; the distance between the chemical container and furthest nozzle shall not exceed 50 feet;

D. Hose, piping, and fittings between the actuator and the chemical container shall have a bursting pressure of 600 pounds per square inch (gage) or higher; the hose, piping, and fitting between the chemical container and the nozzles shall have a bursting pressure of 300 pounds per square inch (gage) or higher; and

E. The system shall discharge in 1 minute or less, for quantities less than 50 pounds (nominal)[2] and in less than 2 minutes for quantities more than 50 pounds.

(2) On underground equipment, the number of pounds (nominal) employed by the system shall equal 5 times the total number of hazardous locations.

(3) The amount of dry chemical discharged into the cable reel compartments of attended underground equipment shall be approximately 25 percent of the total amount required to be discharged by the system; however, the quantity discharged into a cable reel compartment need not exceed 10 pounds.

(g) High expansion foam systems; minimum capacity requirements are as follows:

(1) On underground equipment, foam may be delivered by internal injection, inundation, or combination-type systems. Each system shall deliver water as foam for a minimum of 10 minutes. For internal injection, the rate of water application as high expansion foam shall be not less than 0.5 gallon per minute per hazardous location; however, the minimum total rate shall be not less than 2 gallons per minute. For inundation, the rate of water application as high expansion foam shall be not less than 0.05 gallon per minute per square foot of top surface area of the equipment protected; however, the minimum total rate shall be not less than 5 gallons of water per minute.

(2) In combined internal injection and inundation systems the rate of water applied as foam shall not be less than 0.035 gallon per minute per square foot of top surface area of the equipment protected; however, the minimum total rate shall not be less than 3.5 gallons of water per minute.

(3) Where internal injection is employed, the amount of water discharged as high expansion foam into the cable reel compartments of underground equipment regularly operated by a miner shall be approximately 25 percent of the total amount required to be discharged by the system; however, the quantity of water discharged as foam into the cable reel compartment need not exceed 1.5 gallons.

(h) Extinguishing agents; requirements on mining equipment employed in low vertical clearance are as follows: On mining equipment no more than 32 inches high, the quantity of extinguishing agent required may be reduced by one-fourth if space limitations on the equipment require such reduction.

(i) Fire-suppression systems; hazards; training of miners requirements are as follows: Each operator shall instruct all miners normally assigned to the active workings of the mine with respect to any hazards inherent in the operation of all fire-suppression systems and where appropriate, the safeguards available at each such installation.

(j) Inspection of fire-suppression systems requirements are as follows: (1) All fire-suppression systems shall be visually inspected at least once each week by a person qualified to make such inspections.

[2] The word "nominal" is used in this standard to express the approximate weight in pounds of all-purpose dry chemical (ammonium dihydrogen phosphate) because the density of the all-purpose dry chemical is less than the density of sodium bicarbonate; a system originally designed for 50 pounds of sodium bicarbonate will not hold quite 50 pounds of all-purpose dry chemical.

(2) Each fire-suppression system shall be tested and maintained in accordance with the requirements specified in the appropriate National Fire Code listed as follows for the type and kind of device used:

National Fire Code No. 11A "High Expansion Foam Systems" (NFPA No. 11A–1970).

National Fire Code No. 13 "Installation of Sprinkler Systems" (NFPA No. 13A–1974).

National Fire Code No. 15 "Water Spray Fixed Systems" (NFPA No. 15–1973).

National Fire Code No. 17 "Dry Chemical Systems" (NFPA No. 17–1973).

National Fire Code No. 72A "Local Protective Signaling Systems" (NFPA No. 72A–1974).

National Fire Code No. 198 "Care of Fire Hose" (NFPA No. 198–1972).

(3) A record of the inspections required by this Section shall be maintained by the operator. The record of the weekly inspections shall be maintained at an appropriate location near each fire-suppression system.

(k) Incorporation by reference; availability of publications:

Publications to which references are made in this standard are hereby incorporated by reference and made a part herof. The incorporated publications are available for examination at each Metal and Nonmetal Mine Health and Safety Subdistrict Office of the Mining Enforcement and Safety Administration. National Fire Codes may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210. The Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, 345 East 47th St., New York, NY 10017.

R. Section 57.5 "Air quality, ventilation, radiation, and physical agents" is proposed to be amended as follows:

217. It is proposed to add a new mandatory standard 57.5–18E which is applicable to surface and underground as follows:

57.5–18E *Mandatory.*—Mechanical ventilation equipment shall be installed and used whenever ventilation and air quality is not maintained in accordance with the applicable standards in this section 57.5.

218. It is proposed to add a new mandatory standard 57.5–18F which is applicable to surface and underground as follows:

57.5–18F *Mandatory.* MNMSAC.—All underground main fans shall have remote controls at safe locations, preferably on the surface, and protected against possible damage.

219. It is proposed to revoke advisory standard 57.5–21. MNMSAC.

220. It is proposed to revoke advisory standard 57.5–30. MNMSAC.

221. It is proposed to revoke and replace reserved number 57.5–35 with the series of numbers 57.5–35A through 57.5–35Z under the present center heading and center subheading, and reserve numbers 57.5–35C through 57.5–35Z.

222. It is proposed to add a new mandatory standard 57.5–35A which is applicable to underground only as follows:

57.5–35A *Mandatory.* MNMSAC. — Seals shall be provided with a means for checking the quality of air behind the seal and a means to prevent a water head from developing unless the seal is designed to impound water.

223. It is proposed to add a new mandatory standard 57.5–35B which is applicable to underground only as follows:

57.5-35B *Mandatory.*—Booster fans shall be:

(a) Installed in noncombustible bulkheads or with noncombustible air ducts in a manner to prevent recirculation;

(b) Installed with noncombustible housings;

(c) Inspected at least weekly to insure proper operation of fan, fan signal devices and fan controls;

(d) Provided with an automatic signal device to give warning or alarm should the fan system malfunction. The signal device shall be so located that it can be seen or heard by a responsible person at all times when persons are underground;

(e) Equipped with two sets of controls capable of starting, stopping, and reversing the fans. One set of controls shall be located at the fans. A second set of controls shall be at another location remote from the fans.

224. It is proposed to add a new mandatory standard 57.5-43 which is applicable to underground only as follows:

57.5-43 *Mandatory.*—At every underground mine where radon daughter concentrations in excess of 0.3 WL are found in any active workings:

(a) Radon daughter sampling equipment shall be available for use on each given shift when men are working underground.

(b) A competent person shall be available to make radon daughter measurements required by the standard in this section on each shift.

(c) Each alpha detector in the sampling equipment shall be calibrated prior to its initial use, and thereafter, at intervals not to exceed 6 months. The most recent calibration record for each instrument shall be kept with the instrument and be available for inspection by the Secretary or his duly authorized representative.

(d) Except as required by this section, procedures for sampling and calibration of sampling equipment shall be in accordance with American National Standards Institute (ANSI) N-13.8-1973, section 14, which is hereby incorporated by reference and made a part hereof. This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

225. It is proposed to add a new mandatory standard 57.5-44 which is applicable to underground only as follows:

57.5-44 *Mandatory.* MNMSAC.—The wearing of respirators approved for protection against radon daughters shall be required in environments exceeding 1.0 WL and respirator use shall be in compliance with Standard 57.5-5.

226. It is proposed to add a new mandatory standard 57.5-45 which is applicable to underground only as follows:

57.5-45 *Mandatory.* MNMSAC.—Inactive workings, in which radon daughter concentrations are above 1.0 WL, shall be posted against unauthorized entry and designated by signs indicating them as areas in which approved respirators shall be worn.

227. It is proposed to add a new standard 57.5-46 which is applicable to underground only as follows:

57.5-46 *Mandatory.* MNMSAC.—Where radon daughter concentrations exceed 10 WL, respirator protection against radon gas shall be provided in addition to protection against radon daughters. Protection against radon gas shall be provided by supplied air devices or by face masks containing adsorbent material capable of removing both radon and its daughters.

228. It is proposed to add a new mandatory standard 57.5-47 which is applicable to underground only as follows:

57.5-47 *Mandatory.* MNMSAC.—Gamma radiation surveys shall be conducted annually in all underground mines where radioactive ores are mined.

(a) Surveys shall be in accordance with ANSI N 13.8-1973, section 14, for gamma radiation measurement methods as set forth in 57.5-43(d). This publication may be examined in any Metal and Nonmetal Mine Health and Safety Subdistrict Office, Mining Enforcement and Safety Administration, or may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(b) Where average gamma radiation measurements are in excess of 2.0 milliroentgen per hour in the working place, gamma radiation dosimeters shall be provided for all persons affected, and records of cumulative individual gamma radiation exposure shall be kept.

(c) Annual individual gamma radiation exposure shall not exceed 5 Rems.

S. Section 57.9 "Loading, hauling, dumping" is proposed to be amended as follows:

229. It is proposed to revoke advisory standard 57.9-18. MNMSAC.

230. It is proposed to revise advisory standard 57.9-35 which is applicable to surface and underground and make it mandatory as follows:

57.9-35 *Mandatory.* MNMSAC. — Movements of two or more pieces of rail equipment operating independently on the same track shall be suitably controlled for safe operation.

231. It is proposed to revise advisory standard 57.9-46 which is applicable to surface and underground and make it mandatory as follows:

57.9-46 *Mandatory.* MNMSAC.—Backpoling of trolleys shall be avoided wherever possible; but when necessary, backpoling shall be done only at slow speeds.

232. It is proposed to revise advisory standard 57.9-56 which is applicable to surface and underground and make it mandatory as follows:

57.9-56 *Mandatory.* MNMSAC.—Where necessary, bumper blocks or the equivalent shall be provided at all track dead-ends.

233. It is proposed to revise advisory standard 57.9-57 which is applicable to surface and underground and make it mandatory as follows:

57.9-57 *Mandatory.* MNMSAC.—Grizzlies, grates, and other stationary sizing devices shall be anchored securely.

234. It is proposed to renumber and revise advisory standard 57.9-108 and make it mandatory and applicable to surface and underground as follows:

57.9-72 *Mandatory.* MNMSAC. — Persons attempting to free hangups shall be experienced persons who understand the hazards involved.

235. It is proposed to add a new mandatory standard 57.9-73 which is applicable to surface and underground as follows.

57.9-73 *Mandatory.* MNMSAC.—Defective equipment, removed from service as unsafe to operate, shall be tagged to prohibit further use until repairs are completed.

236. It is proposed to revise advisory standard 57.9-112 which is applicable to underground only and make it mandatory as follows:

57.9-112 *Mandatory.* MNMSAC.—On rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

§ 57.11 [Amended]

T. Section 57.11 "Travelways and escapeways" is proposed to be amended as follows:

237. It is proposed to revise mandatory standard 57.11-50 which is applicable to underground only as follows:

57.11-50 *Mandatory.* MNMSAC. — Every mine shall have two or more separate, properly maintained escapeways to the surface from the lowest levels which are so positioned that damage to one shall not lessen the effectiveness of the others. A method of refuge shall be provided while a second opening to the surface is being developed. A second escapeway is recommended, but not required, during the exploration or development of an ore body.

In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two separate escapeways with in a time limit of one hour when using the normal exit method. These refuges must be positioned so that the employee can reach one of them within 30 minutes from the time he leaves his workplace.

238. It is proposed to revise mandatory standard 57.11-55 which is applicable to underground only as follows:

57.11-55 *Mandatory.* MNMSAC.—Designated escapeways inclined more than 30 degrees from the horizontal, and more than 300 feet in vertical extent, shall be provided with emergency hoisting facilities.

§ 57.12 [Amended]

U. Section 57.12 "Electricity" is proposed to be amended as follows:

239. It is proposed to revise mandatory standard 57.12-1 which is applicable to surface and underground as follows:

57.12-1 *Mandatory.*—Electrical circuits and equipment shall be protected against overloads and short circuits by automatic-trip circuit breakers or fuses. Such circuit breakers or fuses shall be capable of interrupting overloads and short circuits without damage to the circuit or equipment. Overload protective devices shall open all ungrounded conductors of the circuit whenever any one conductor becomes overloaded. Thermal devices used to protect the equipment and circuits against overloads shall be backed up by short-circuit protection.

240. It is proposed to revise mandatory standard 57.12-3 which is applicable to surface and underground as follows:

57.12-3 *Mandatory.*—Individual overload and short-circuit protection shall be provided for the trailing cables of mobile equipment.

241. It is proposed to revise mandatory standard 57.12–5 which is applicable to surface and underground as follows:

57.12–5 *Mandatory.* MNMSAC.—Mobile equipment shall not run over power conductors, nor shall loads be dragged over power conductors, unless the conductors are properly bridged or protected.

242. It is proposed to revise advisory standard 57.12–6 which is applicable to surface and underground and make it mandatory as follows:

57.12–6 *Mandatory.* MNMSAC.—Distribution boxes shall be provided with a disconnecting device for each branch circuit. Such disconnecting devices shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open, and shall be labeled to show which units they control.

243. It is proposed to revise advisory standard 57.12–8 which is applicable to surface and underground and make it mandatory as follows:

57.12–8 *Mandatory.* MNMSAC.—Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

244. It is proposed to revise advisory standard 57.12–10 which is applicable to surface and underground and make it mandatory as follows:

57.12–10 *Mandatory.* MNMSAC.—Telephone and low-potential signal wire shall be protected, by isolation or additional insulation, from contacting energized power conductors or any other power source.

245. It is proposed to revise mandatory standard 57.12–11 which is applicable to surface and underground as follows:

57.12–11 *Mandatory.* MNMSAC.—High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

246. It is proposed to revise advisory standard 57.12–12 which is applicable to surface and underground and make it mandatory as follows:

57.12–12 *Mandatory.* MNMSAC.—The potential on bare signal wires accessible to contact by persons shall not exceed 40 volts.

247. It is proposed to revise advisory standard 57.12–13 which is applicable to surface and underground and make it mandatory as follows:

57.12–13 *Mandatory.* MNMSAC.—Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

(a) Mechanically strong with electrical conductivity as near as possible to that of the original,

(b) Insulated to a degree at least equal to that of the original, and sealed to exclude moisture, and

(c) Provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

248. It is proposed to revise mandatory standard 57.12–14 which is applicable to surface and underground as follows:

57.12–14 *Mandatory.* MNMSAC.—Power cables energized to potentials in excess of 150 volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices, and the cable is insulated from the equipment in conformance with other standards in this Part.

249. It is proposed to revise mandatory standard 57.12–16 which is applicable to surface and underground as follows:

57.12–16 *Mandatory.* MNMSAC.—Electrical equipment shall be deenergized before work is done on such equipment. Power switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Suitable warning notices shall be posted at the power switch and signed by the individuals who are to do the work. Such locks or preventive devices shall be removed only by the persons who installed them or by authorized personnel.

250. It is proposed to revise mandatory standard 57.12–28 which is applicable to surface and underground as follows:

57.12–28 *Mandatory.* MNMSAC.—Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the most recent tests shall be made available to the Secretary.

251. It is proposed to revise advisory standard 57.12–34 which is applicable to surface and underground and make it mandatory as follows:

57.12–34 *Mandatory.* MNMSAC.—Portable extension lights, and other lights that by their location present a shock or burn hazard, shall be guarded.

252. It is proposed to revise standard 57.12–42 which is applicable to surface and underground and make it mandatory as follows:

57.12–42 *Mandatory.* MNMSAC.—Both rails shall be bonded or welded at every joint and rails shall be crossbonded at least every 200 feet if the track serves as the return trolley circuit. When rails are moved, replaced, or broken bonds are discovered, they shall be re-bonded within three working shifts.

253. It is proposed to revoke advisory standard 57.12–70, and to revise advisory standard 57.12–69 which is applicable to surface only and make it mandatory as follows:

57.12–69 *Mandatory.* MNMSAC.—Each undergrounded power conductor or telephone wire directly exposed to lightning that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than 25 feet.

254. It is proposed to revise advisory standard 57.12–81 which is applicable to underground only and make it mandatory as follows:

57.12–81 *Mandatory.* MNMSAC.—All metallic pipelines, 1,000 feet or more in length running parallel to trolley tracks, that are used as a ground return circuit shall be bonded to the return circuit rail at the ends of the pipeline and at intervals not to exceed 500 feet.

255. It is proposed to revise advisory standard 57.12–83 which is applicable to underground only and make it mandatory as follows:

57.12–83 *Mandatory.* MNMSAC.—Power cables in shafts and boreholes shall be fastened securely in such a manner as to prevent undue strain on the sheath, insulation, or conductors.

256. It is proposed to revise advisory standard 57.12–84 which is applicable to underground only and make it mandatory as follows:

57.12–84 *Mandatory.* MNMSAC.—Disconnecting switches that can be opened safely under load shall be provided underground at all branch circuits extending from primary power circuits near shafts, adits, levels, and boreholes.

§ 57.15 [Amended]

V. Section 57.15 "Personal protection is" proposed to be amended as follows:

257. It is proposed to revise advisory standard 57.15–6 which is applicable to surface and underground and make it mandatory as follows:

57.15–6 *Mandatory.* MNMSAC.—Special protective equipment and clothing shall be provided, maintained in a sanitary and reliable condition and used whenever (1) hazards of process or environment, (2) chemical hazards, (3) radiological hazards, or (4) mechanical irritants are encountered in a manner capable of causing injury or impairment.

258. It is proposed to add a new mandatory standard 57.15–14 which is applicable to surface and underground as follows:

57.15–14 *Mandatory.*—Quick - drenching facilities for flushing of the eyes and body shall be provided for immediate emergency use within the work area at operations where injurious corrosive materials are used or handled.

W. Section 57.19 "Man hoisting" is proposed to be amended as follows:

259. It is proposed to revise mandatory standard 57.19–7 as follows:

57.19–7 *Mandatory.*—All hoists shall be provided with devices to prevent overtravel. Hoists for shafts exceeding 100 feet in depth also shall be provided with overspeed devices.

(a) The overtravel devices shall: (1) Be directly activated by the conveyance travel, or be directly driven from the hoist drum and synchronized with the movement of the conveyance;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop; and

(3) Be provided with back-out switches.

(b) The overspeed devices shall: (1) Be directly driven from the hoist drum;

(2) When activated, cause the hoist drum or traction wheel brakes to bring the conveyance to a safe stop;

(3) Activate the control at a setting not to exceed the rated man-hoisting speed by more than 15 percent; and

(4) Monitor effectively the speed of the conveyance at any point of its travel so that safe travel and safe stops can be effected.

260. It is proposed to revise advisory standard 57.19-8 and make it mandatory as follows:

57.19-8. *Mandatory.* MNMSAC.—Where creep or slip may alter the effective position of safety devices, friction hoists shall be equipped with synchronizing mechanisms that recalibrate the overtravel devices and position indicators.

261. It is proposed to revise advisory standard 57.19-11 and make it mandatory as follows:

57.19-11 *Mandatory.* MNMSAC.—Flanges on drums shall extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

262. It is proposed to revise advisory standard 57.19-12 and make it mandatory as follows:

57.19-12 *Mandatory.* — Where grooved drums are used, the grooves shall be of the proper size and pitch for the ropes used. When new rope is installed, the groove of drums shall be machined as needed to assure the size and pitch recommended by the manufacturer for the new rope.

263. It is proposed to add a new mandatory standard 57.19-14 as follows:

57.19-14 *Mandatory.* MNMSAC.—In a friction hoist installation, tapered guides or other approved devices shall be installed above and below the limits of regular travel of the conveyance and arranged to prevent overtravel in the event of failure of other devices.

264. It is proposed to add a new mandatory standard 57.19-15 as follows:

57.19-15 *Mandatory.*—Hooks, shackles, and other attachments that are used to connect a conveyance to the hoist rope shall be individually approved for strength as exceeding rated breaking strength of the rope to which the hook, shackle, or other attachment is connected by a factor of at least 10 percent. Hooks, shackles, and other attachments that have been modified or repaired shall be reapproved before returning to service. Proof of such approval for each hook, shackle, and other attachments in use shall be available for inspection by the Secretary or his duly authorized representative.

265. It is proposed to add a new mandatory standard 57.19-16 as follows:

57.19-16 *Mandatory.*—All cages and skips used for lowering or raising of persons in a mine shall comply with the following: (a) When a bonnet is required, the bonnet shall be made of not less than three-sixteenths (3/16) inch steel plate or of a noncombustible material having equivalent strength.

(b) The cage or skip shall be provided with not less than one-eight (1/8) inch sheet iron or steel side casing or a noncombustible material having equivalent strength.

(1) The side casing shall extend to a height of not less than five feet from the floor.

(2) The side casing shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings that are necessary for signaling.

(c) The cage shall be equipped with a door, or doors, made of steel or other suitable noncombustible material that extends to a height of not less than five feet above the floor.

(1) All doors shall have no openings through which a three-eighths (3/8) inch diameter rod will pass, excepting those openings necessary for signaling, and they shall have a maximum clearance of two inches from the floor.

(2) All doors shall be arranged so that the doors cannot be opened outward from the cage.

(3) All doors shall be fitted with latches that will prevent accidental opening of a door.

(d) The bottom structural members and floor shall be constructed of steel or noncombustible material of sufficient strength to support the conveyance with maximum load at maximum emergency acceleration or deceleration.

(e) The conveyance shall be provided with an escape hatch in the top and/or an escape hatch in the side of the conveyance nearest the manway. Bonnets having a hinged moveable section weighing no more than 150 pounds may be considered as having escape hatches.

(f) Cages or skips suspended by a single hoisting rope shall be provided with safety catches. These safety catches shall:

(1) Be of sufficient strength to safely stop and hold the conveyance with its maximum passenger load at any point in the shaft from the maximum man-hoisting speed. The deceleration rate shall not exceed 3 times the acceleration due to gravity (3g's).

(2) Be performance tested before the conveyance is used to hoist men.

(3) Be visually inspected by a competent person each shift before the conveyance is used. The conveyance shall be rested on chairs or blocked at least once every seven operating days to test mechanical linkage.

266. It is proposed to add a new mandatory standard 57.19-17 as follows:

57.19-17 *Mandatory.* MNMSAC.—Each electric hoist shall be equipped with a manually-operable switch that will initiate emergency braking action to bring the conveyance and the counterbalance safety to rest. This switch shall be located within reach of the hoistman in case the manual controls of the hoist fail.

267. It is proposed to add a new mandatory standard 57.19-18 as follows:

57.19-18 *Mandatory.* MNMSAC.—An overtravel by-pass switch shall be installed on hoists, where necessary, that will allow the conveyance to travel through the overtravel position when the switch is held in the closed position by the hoistman. The overtravel by-pass switch shall return automatically to the open position when released by the hoistman.

268. It is proposed to revoke advisory standard 57.19-27. MNMSAC.

269. It is proposed to revise advisory standard 57.19-36 and make it mandatory as follows:

57.19-36 *Mandatory.*—Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyances. This clearance shall be not less than 15 feet from the bottom of the sheaves or drum and the uppermost part of the highest rope connection of the conveyance when the conveyance is at its uppermost man-landing.

270. It is proposed to revise advisory standard 57.19-37 and make it mandatory as follows:

57.19-37 *Mandatory.*—Fleet angles shall not be greater than 1½ degrees. Fleet angles shall be not less than ½ degree unless a rope guiding device is used.

271. It is proposed to revise advisory standard 57.19-39 and make it mandatory as follows:

57.19-39 *Mandatory.*—Minimum diameters of head sheaves and hoist drums shall conform to the following specifications:

Rope construction:	*Diameter of sheaves and drum times rope diameter*
6×7 Classification	72
6×17 Seale	50
6×19 Seale	51
6×21 Filler wire	45
6×25 Filler wire	41
6×31	38
6×37	33
6×25 type B, flattened strand	45
6×27 type H, flattened strand	45
6×30 type G, flattened strand	45
8×29 Seale	30
8×19 Warrington	31
18×7	51

Drum and sheave diameters shall comply with the rope manufacturer's recommendations for man hoisting applications when ropes of other constructions are used.

272. It is proposed to revise advisory standard 57.19-40 and make it mandatory as follows:

57.19-40 *Mandatory.* MNMSAC.—Head, idler, knuckle, and curve sheaves shall have grooves of proper contour for the specific rope diameter used.

273. It is proposed to revise mandatory standard 57.19-50 as follows:

57.19-50 *Mandatory.* MNMSAC.—Buckets used to hoist persons during vertical shaft sinking operations shall: (a) Be securely attached to a crosshead when traveling in either direction between the lower and upper crosshead parking locations;

(b) Have overhead protection when the shaft depth exceeds 50 feet;

(c) Have sufficient depth or a suitably designed platform to transport persons safely in a standing position;

(d) Have devices to prevent accidental dumping where the bucket is supported by a bail attached to its lower half.

274. It is proposed to revise mandatory standard 57.19-54 as follows:

57.19-54 *Mandatory.* MNMSAC.—Where rope guides are used in shafts other than in shaft sinking operations, the rope guides shall be of a type of lock coil construction.

275. It is proposed to revise advisory standard 57.19-56 and make it mandatory as follows:

57.19-56 *Mandatory.* MNMSAC.—When automatic hoisting is used, a competent opertor of the hoist shall be readily available at or near the hoisting device while any person is underground.

276. It is proposed to revise advisory standard 57.19-57 and make it mandatory as follows:

57.19-57 *Mandatory.* MNMSAC.—No person shall operate a hoist unless within the

preceeding 12 months he has had a medical examination by a qualified, licensed physician who shall certify his fitness to perform this duty. Such certification shall be available at the mine.

277. It is proposed to revoke advisory standard 57.19–60. MNMSAC.

278. It is proposed to revise advisory standard 57.19–61 and make it mandatory as follows:

57.19–61 *Mandatory.* MNMSAC.—The safe speed for hoisting men shall be determined for each shaft, and this speed shall not be exceeded. Men shall not be hoisted at a speed faster than 2,500 feet per minute except in an emergency.

279. It is proposed to revise advisory standard 57.19–62 and make it mandatory as follows:

57.19–62 *Mandatory.* MNMSAC.—Maximum normal operating acceleration and deceleration shall not exceed 6 feet per second per second. During emergency braking, the declaration shall not exceed 16 feet per second per second.

280. It is proposed to revise advisory standard 57.19–66 and make it mandatory as follows:

57.19–66 *Mandatory.* MNMSAC.—In shafts inclined over 45 degrees, management shall determine and post in the conveyance or at each shaft station the maximum number of persons permitted to ride in a hoisting conveyance at any one time. Each person shall be provided a minimum of 1.5 square feet of floor space.

281. It is proposed to revise advisory standard 57.19–67 and make it mandatory as follows:

57.19–67 *Mandatory.* MNMSAC.—During shift changes, an authorized person shall be in charge of each man trip.

282. It is proposed to revise advisory standard 57.19–68 and make it mandatory as follows:

57.19–68 *Mandatory.* MNMSAC.—Men shall enter, ride, and leave conveyances in an orderly manner.

283. It is proposed to revise advisory standard 57.19–72 and make it mandatory as follows:

57.19–72 *Mandatory.*—When combinations of cages and skips are used in the same compartment, the skips shall be empty while men are being transported.

284. It is proposed to revise advisory standard 57.19–74 and make it mandatory as follows:

57.19–74 *Mandatory.*—Men shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance.

285. It is proposed to revise advisory standard 57.19–76 and make it mandatory as follows:

57.19–76 *Mandatory.* MNMSAC.—When men are hoisted, bucket speeds shall not exceed 500 feet per minute, and shall not exceed 200 feet per minute when within 100 feet of the intended station.

286. It is proposed to revise advisory standard 57.19–81 and make it mandatory as follows:

57.19–81 *Mandatory.*—Conveyances controlled by a hoistman, when not in use, shall be released and the conveyance shall be raised or lowered at least 10 feet from the floor of the landing.

287. It is proposed to add a new mandatory standard 57.19–83 as follows:

57.19–83 *Mandatory.* MNMSAC.—A manually operated device shall be installed on each electric hoist that will allow the conveyance or counterbalance to be removed from an overtravel position. Such device shall not release the brake, or brakes, holding the overtravelled conveyance or counterbalance until sufficient drive motor torque has been developed to assure movement of the conveyance or counterbalance in the correct direction only.

288. It is proposed to revise advisory standard 57.19–91 and make it mandatory as follows:

57.19–83 *Mandatory.* MNMSAC.—A manaccept hoisting instructions by voice communication unless the regular signaling systems are out of order. During such an emergency one authorized person shall be designated to direct movement of the conveyance.

289. It is proposed to revise advisory standard 57.19–93 and make it mandatory as follows:

57.19–93 *Mandatory.*—A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal shall be prohibited.

290. It is proposed to revise advisory standard 57.19–102 and make it mandatory as follows:

57.19–102 *Mandatory.* — MNMSAC. — A means shall be provided to guide the movement of a shaft conveyance.

291. It is proposed to revise advisory standard 57.19–106 and make it mandatory as follows:

57.19–106 *Mandatory.*—MNMSAC.—Shaft sets shall be kept in good repair and clean of hazardous material.

292. It is propsed to revise advisory standard 57.19–111 and make it mandatory as follows:

57.19–111 *Mandatory.*—MNMSAC.—Substantial fixed ladders shall be provided from the collar to as near the shaft bottom as practical during shaft-sinking operations, or an escape hoist powered by an emergency power source shall be provided. When persons are on the shaft bottom, a chain ladder, wire rope ladder, or other extension ladders shall be used from the fixed ladder or lower limit of the escape hoist to the shaft bottom.

293. It is proposed to revise advisory standard 57.19–121 and make it mandatory as follows:

57.19–121 *Mandatory.*—MNMSAC.—Complete records shall be kept for three years of inspections, tests, and maintenance of shafts and hoisting equipment.

294. It is proposed to revise advisory standard 57.19–122 and make it mandatory as follows:

57.19–122 *Mandatory.*—MNMSAC. — Parts used to repair hoists shall have properties that will insure the proper and safe function of the hoist.

295. It is proposed to revise advisory standard 57.19–123 and make it mandatory as follows:

57.19–123 *Mandatory.* MNMSAC. — Wire ropes shall be lubricated or treated with dressing as recommended or approved by the rope manufacturer.

296. It is proposed to revise advisory standard 57.19–124 and make it mandatory as follows:

57.19–124 *Mandatory.*—Ropes other than those on friction hoists shall be cut off and reconnected to the conveyance at regular intervals at least five times during the anticipated life of the rope, or more frequently if inspection shows it necessary; cutoff intervals shall not exceed 6 months for ropes with life of more than 3 years. At least 6 feet shall be cut from the rope above the highest connection; this portion shall be examined for corrosion, damage, wear, and fatigue.

297. It is proposed to revise advisory standard 57.19–125 and make it mandatory as follows:

57.19–125 *Mandatory.*—Hoist ropes wound on the drum in multiple layers shall be cut off and repositioned on the drum at least three times during the anticipated life of the hoist rope to distribute wear at change of layers and crossover points. The length of the cutoff at the drum end shall be at least ¾ of a wrap and shall not be a whole number multiple of the circumference of the drum.

298. It is proposed to revise advisory standard 57.19–126 and make it mandatory as follows:

57.19–126 *Mandatory.*—Ropes shall be calipered at least every two months to effectively determine the rate of wear and damage. Caliper measurements shall be taken:

(a) Immediately above the socket or clips and above the safety connection.

(b) Where the ropes rest on the sheaves.

(c) Where the ropes leave the drums when the conveyances are at the regular stopping points.

(d) Where a layer of rope begins to overlap another layer on the drum.

(e) At 100-foot intervals; measurements shall be made midway between the last previously calipered points.

299. It is proposed to revoke advisory standard 57.19–127. MNMSAC.

300. It is proposed to revise advisory standard 57.19–130 and make it mandatory as follows:

57.19–130 *Mandatory.*—Empty man conveyances shall be operated up and down shafts at least one round trip before:

(a) Hoisting men after any shaft or related equipment repairs, and

(b) Regular man trips.

301. It is proposed to revise advisory standard 57.19–131 and make it mandatory as follows:

57.19–131 *Mandatory.* — Conveyance connections shall be inspected each day that they are in use.

302. It is proposed to revise advisory standard 57.19–132 and make it mandatory as follows:

57.19–132 *Mandatory.*—Safety catches shall be inspected daily; drop tests shall be made at the time of installation. Every operating day the cage shall be rested on chairs or proper blocking to check the operation or activation of the safety catches by allowing the rope to be slacked suddenly.

303. It is proposed to revise advisory standard 57.19–133 and make it mandatory as follows:

57.19-133 *Mandatory.* MNMSAC.—Operating shafts shall be inspected at least weekly. Idle shafts shall be inspected immediately before use.

304. It is proposed to revise advisory standard 57.19-134 and make it mandatory as follows:

57.19-134 *Mandatory.* MNMSAC.—Sheaves in operating shafts shall be inspected weekly and kept properly lubricated.

305. It is proposed to revise advisory standard 57.19-135 and make it mandatory as follows:

57.19-135 *Mandatory.* MNMSAC.—Rollers used in operating inclined shafts shall be lubricated, properly aligned, and kept in good repair.

X. Section 57.20 "Miscellaneous" is proposed to be amended as follows:

306. It is proposed to revise mandatory standard 57.20-2 which is applicable to surface and underground as follows:

57.20-2 *Mandatory.* MNMSAC.—An adequate supply of potable drinking water shall be provided at all active working areas.

(a) The common drinking cup and containers from which drinking water must be dipped or poured are prohibited.

(b) Where single service cups are supplied, a sanitary container for unused cups and a receptacle for used cups shall be provided.

(c) When water is cooled by ice, the ice shall either be of potable water or shall not come in contact with the water.

(d) Potable water outlets shall be posted.

(e) Potable water systems shall be constructed to prevent backflow or back-siphonage of non-potable water.

307. It is proposed to revise advisory standard 57.20-3 which is applicable to surface and underground and make it mandatory as follows:

57.20-3 *Mandatory.* MNMSAC.—At all mining operations:

(a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

(b) The floor of every workplace shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable.

(c) Every floor, working place, and passageways shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

308. It is proposed to add a new mandatory standard 57.20-11 which is applicable to surface and underground as follows:

57.20-11 *Mandatory.* MNMSAC.—Areas where health or safety hazards exist that are not immediately obvious to employees shall be barricaded, or warning signs shall be posted at all approaches. Warning signs shall be readily visible, legible, display the nature of the hazard, and any protective action required.

309. It is proposed to add a new mandatory standard 57.20-12 which is applicable to surface and underground as follows:

57.20-12 *Mandatory.* MNMSAC—Toxic materials used in conjunction with or discarded from mining or milling of a product shall be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required.

310. It is proposed to add a new mandatory standard 57.20-13 which is applicable to surface and underground as follows:

57.20-13 *Mandatory.* MNMSAC.—Receptacles with covers shall be provided and used for the disposal of waste food and associated materials. They shall be emptied frequently and shall be maintained in a clean and sanitary condition.

311. It is proposed to add a new mandatory standard 57.20-14 which is applicable to surface and underground as follows:

57.20-14 *Mandatory.* MNMSAC.—No person shall be allowed to consume or store food or beverages in a toilet room nor in any area exposed to a toxic material.

§ 57.21 [Amended]

Y. Section 57.21 "Gassy mines" is proposed to be amended as follows:

312. It is proposed to revise mandatory standard 57.21-12 as follows:

57.21-12 *Mandatory.* MNMSAC.—Immediately before and continuously during welding or cutting with an arc or open flame or soldering with an open flame, in other than fresh air, or in places where methane is present or may enter the air current, a competent person shall test for methane with a device approved by the Secretary for detecting methane.

313. It is proposed to revise mandatory standard 57.21-13 as follows:

57.21-13 *Mandatory.* MNMSAC.—Welding or cutting with an arc of open flame or soldering with an open flame shall not be performed in atmospheres containing more than 1.0 percent of methane as determined by a device approved by the Secretary for detecting methane.

314. It is proposed to revise advisory standard 57.21-22 and make it mandatory as follows:

57.21-22 *Mandatory.* MNMSAC.—The main intake and return air currents in mines shall be in separate shafts, slopes, or drifts, except that during shaft or slope development, vent tubing may be used in the same opening. Until a second opening to the surface can be provided, single shafts used for intake and return air shall be provided with a curtain wall or partition.

315. It is proposed to revoke mandatory standard 57.21-26, MNMSAC.

316. It is proposed to revise mandatory standard 57.21-27 as follows:

57.21-27 *Mandatory.* MNMSAC.—When the main fan or fans have been shut down with all men out of the mine, no person, other than those competent to examine the mine, or other authorized persons, shall go underground until the fans have been started and the mine is examined for methane and other hazards and declared safe.

317. It is proposed to revise mandatory standard 57.21-30 follows:

57.21-30 *Mandatory.* MNMSAC.—Auxiliary fans shall be of a permissible type, maintained in permissible condition, so located and operated to avoid recirculation of air. Auxiliary fans shall not be used to ventilate any working place during interruption of normal mine ventilation. If the auxiliary fan is stopped or fails, the electrical equipment in the affected area shall be stopped and the power disconnected at the power source until ventilation in the affected area is restored. Tests shall be made at the fan for methane before auxiliary fans are started. The air passing over or through auxiliary fan units shall not exceed 1.0 percent of methane.

318. It is proposed to revise advisory standard 57.21-31 and make it mandatory as follows:

57.21-31 *Mandatory.* MNMSAC.—Auxiliary fans shall be inspected by competent persons at least twice each operating shift.

319. It is proposed to revoke mandatory standard 57.21-32. MNMSAC.

320. It is proposed to revise mandatory standard 57.21-33 as follows:

57.21-33 *Mandatory.* MNMSAC.—The volume and velocity of the current of air coursed through all active areas shall be sufficient to dilute, render harmless, and carry away methane, smoke, fumes, and dust.

321. It is proposed to revise mandatory standard 57.21-34 as follows:

57.21-34 *Mandatory.* MNMSAC.—The quantity of air coursed through the last open crosscut in pairs or sets of entries or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections.

322. It is proposed to revise advisory standard 57.21-36 and make it mandatory as follows:

57.21-36 *Mandatory.* MNMSAC.—Permanently installed battery-charging stations and transformer stations in combustible areas shall be ventilated by separate splits of air conducted directly to return air courses. Permanently installed means intended to exist for 1 year or more.

323. It is proposed to revise mandatory standard 57.21-39 as follows:

57.21-39 *Mandatory.* MNMSAC.—If methane gas in excess of 1.0 percent is detected in the air not less than 12 inches from the back, face, and rib of an underground working place or places, adjustments shall be made in the ventilation immediately so that the concentration of methane gas in such air is reduced to 1.0 percent or less. While such changes or adjustments are underway and until they have been achieved, power to electric equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine.

324. It is proposed to revise mandatory standard 57.21-40 as follows:

57.21-40 *Mandatory.* MNMSAC.—If 1.5 percent or higher concentration of methane gas is present in air returning from an underground working place or places, or is present in the air not less than 12 inches from the back, face, and rib of an underground working place, all men other than those persons referred to in Section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act shall be withdrawn from the area of the mine endangered by such methane gas until the concentration of methane in such areas is reduced to 1.0 percent or less.

325. It is proposed to revise mandatory standard 57.21-41 as follows:

57.21-41 *Mandatory.* MNMSAC.—Air that has passed by an opening of any unsealed

abandoned area and contains 0.25 percent or more of methane shall be coursed directly to a return airway. Examinations of such air shall be conducted during the preshift examinations required by mandatory standard 57.21–59.

326. It is proposed to revoke advisory standard 57.21–47. MNMSAC.

327. It is proposed to revise mandatory standard 57.21–50 as follows:

57.21–50 *Mandatory.*—Damaged brattices, vent tubing, seals, stoppings, bulkheads, overcasts, regulators and all other equipment and installations used to course air throughout the mine shall be repaired immediately.

328. It is proposed to revise mandatory standard 57.21–52 as follows:

57.21–52. *Mandatory.* MNMSAC.—Entries or rooms shall not be started off entries beyond the last open crosscuts, except that room necks and entries not to exceed 18 feet in depth may be turned off entries beyond the last open crosscuts if such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

329. It is proposed to revise advisory standard 57.21–53 and make it mandatory as follows:

57.21–23 *Mandatory.* MNMSAC.—Stoppings in crosscuts between intake and return airways, on entries other than room entries, shall be built of solid, substantial material; exposed surfaces shall be made of fire-resistant material or, if the material mined is combustible, stopping shall be made of noncombustible material.

330. It is proposed to revoke advisory standard 57.21–54. MNMSAC.

331. It is proposed to revise mandatory standard 57.21–57 as follows:

57.21–57 *Mandatory.* MNMSAC.—Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through such doorways. Doors shall be plainly marked to indicate whether they shall be closed or open for ventilation control purposes.

332. It is proposed to revise mandatory standard 57.21–58 as follows:

57.21–58 *Mandatory.* MNMSAC.—Overcasts and undercasts shall be:

(a) Constructed tightly of noncombustible material.

(b) Of sufficient strength to withstand possible falls from the back.

(c) Kept clear of obstruction.

333. It is proposed to revise advisory standard 57.21–65 and make it mandatory as follows:

57.21–65 *Mandatory.*—At intervals not greater than seven days the mine foreman, or other equally competent person designated by the mine foreman, shall make examinations for hazardous conditions and for compliance with mandatory health and safety standards, and shall make tests for methane, toxic gases, and carbon monoxide. Such tests shall be made with devices approved by the Secretary at the following locations:

(a) In the return of each split where it enters the main return,

(b) On accessible pillar falls,

(c) At seals,

(d) In the main return,

(e) In at least one entry of each intake and return airway,

(f) In idle workings,

(g) In abandoned workings, insofar as conditions permit.

334. It is proposed to revise advisory standard 57.21–66 and make it mandatory as follows:

57.21–66 *Mandatory.* MNMSAC.—The mine foreman or other designated official shall read and countersign promptly the reports of the required examinations made by competent persons. Where such reports disclose hazardous conditions, the affected employees shall be so informed and such conditions shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 8(a) of the Federal Metal and Nonmetallic Mine Safety Act until such danger is abated. A responsible mine official at the next highest level of authority, if such level exists, shall also read and countersign at least weekly the required reports to insure that proper inspections have been made and remedial action taken.

335. It is proposed to revise mandatory standard 57.21–76 as follows:

57.21–76 *Mandatory.* MNMSAC.—Diesel-powered equipment shall not be taken into or operated in places where methane exceeds 1.0 percent at any point not less than 12 inches from the back, face, and rib.

336. It is proposed to revise mandatory standard 57.21–77 as follows:

57.21–77 *Mandatory.* MNMSAC.—Trolley wires and trolley feeder wires shall be on intake air and shall not extend into the last open crosscut or other ventilation opening. Such wires shall be kept at least 150 feet from pillar recovery workings.

337. It is proposed to revise mandatory standard 57.21–78 as follows:

57.21–78 *Mandatory.*—Only permissible equipment maintained in permissible condition shall be taken into or used beyond the last open crosscut or in places where 1.0 percent or more methane is present or may enter the air current.

338. It is proposed to revise mandatory standard 57.21–79 as follows:

57.21–79 *Mandatory.* MNMSAC.—Only permissible distribution boxes shall be used ing working places and other places where 1.0 percent or more of methane may be present or may enter the air current.

339. It is proposed to revoke mandatory standard 57.21–81. MNMSAC.

340. It is proposed to revise mandatory standard 57.21–99 as follows:

57.21–99 *Mandatory.* MNMSAC.—When blasting on shift, examinations for methane shall be made immediately before firing each shot or round, and again before other work is performed. Examinations shall be made by competent persons with devices approved by the Secretary for detecting methane.

341. It is proposed to revise mandatory standard 57.21–100 as follows:

57.21–100 *Mandatory.* MNMSAC.—Shots or rounds shall not be fired in places where 1.0 percent or more of methane is present at a point no less than 12 inches from the back, face, and rib. Tests to determine the presence of methane sall be made by a competent person with devices approved by the Secretary for detecting methane.

342. It is proposed to revise advisory standard 57.21–101 and make it mandatory as follows:

57.21–101 *Mandatory.* MNMSAC.—Shots and rounds shall be fired by competent persons.

[FR Doc.77-2462 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-332]

PART 885—LOANS FOR HOUSING THE ELDERLY OR HANDICAPPED

The Department of Housing and Urban Development (HUD) published on February 25, 1976, at 41 FR 8314, a final rule amending Title 24, Part 885 to provide a program of both construction and long-term financing for projects for the elderly or handicapped pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q). Subsequent to publication of this final rule, the Housing Authorization Act of 1976, Pub. L. 94-375, was enacted August 3, 1976, making certain changes in the provisions of Section 202, pursuant to which the Department is issuing this final rule amending Part 885.

The significant changes being made in Part 885 are the following:

1. Section 885.3 is being changed to correct an error in the final rule, since Parts 880 and 881 apply to loans made under this Part to the extent that they are "not" inconsistent with Subparts C and D of this Part. The original publication omitted the word "not".

2. The definition of "Elderly or Handicapped Families" in Section 885.5 is being amended to reflect a statutory change to include two or more elderly or handicapped persons living together, or one or more of such persons living with another person who is determined by HUD to be essential to their care or well being. This definition is also being changed to include the surviving member or members of any family described in the definition who are living with the deceased member of the family at the time of his or her death.

The definition of "Assistant Secretary" is being changed to mean the Assistant Secretary for Housing-Federal Housing Commissioner to reflect an organizational name change in HUD.

3. Section 885.215 is being amended by the addition of a new subsection (e) which will provide that the Assistant Secretary or field office may amend the amount of a fund reservation pursuant to subsection (b) at any time before the final closing of a loan. This change is needed since program experience has shown that the amount of the reservation initially granted is often insufficient to provide loan funds needed to permit development of a financially feasible project. Since minimal project information is required at this stage, it is difficult to determine the amount of loan funds which will be needed.

4. Section 885.315(c) is being amended to restrict the requirement for evaluation of the Borrower's proposed Contract Rents to a determination as to their compliance with the Fair Market Rent Limits, except that in the case of any Proposal for a project with less than all rental dwelling units under the Section 8 Housing Assistance Payments Program, the amendment also provides that sufficient market demand should be anticipated to assure the feasibility of the project.

5. Section 885.315(d)(1)(i) is being amended to eliminate the requirement that Field Office approval of a Preliminary Proposal include notification of the Contract Rents which are acceptable to HUD. Such notification will be made in connection with notice of approval of the Final Proposal.

6. A new § 885.320 is being added to provide that any Contract Rents which are hereafter or have been previously proposed by a Borrower in its Preliminary Proposal, or have been approved by HUD under the Preliminary Proposal submission may be modified and resubmitted by the Borrower at the final proposal stage, or at any time prior to execution of the Agreement to Enter into the Housing Assistance Payments Contract.

This Section also will provide that HUD will evaluate the acceptability of the Contract Rents proposed by the Borrower and will notify the Borrower at the time of approval of the Final Proposal as to the Contract Rents which will be acceptable to HUD when these are lower than the Contract Rents proposed by the Borrower.

7. A new § 885.325 is being added to provide that the provisions of § 880.108 (b) (New Construction) and § 881.108 (b) (Substantial Rehabilitation) are inapplicable to Section 202 projects. In lieu of the comparability test provided thereunder, a provision has been added that the applicable Contract Rents will be subject to reduction only to the extent that they are higher than the rents determined by HUD to be necessary to cover operating costs, including debt service on the Section 202 loan, and reasonable reserves as approved by HUD. However, as noted in Paragraph 4, above, in the case of proposals for projects with less than all rental dwelling units under the Section 8 Housing Assistance Payments Program, this amendment also provides that there should be sufficient market demand to assure the feasibility of the project.

8. Section 885.410(a) is being amended to provide that the Assistant Secretary or field office may increase the amount of a fund reservation at any time before the final closing of a loan, and to require that applications for substantial rehabilitation shall be subject to a maximum mortgage amount that would apply under § 231.4 (b) and (c) of Chapter II of this Title.

9. Section 885.410(b) is being amended to reflect the new statutory interest rate formula as set forth in section 11(c)(1) of the Housing Authorization Act of 1976. Under this amendment, the interest rate for Section 202 loans will be based on the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year next preceding the date on which the loan is made. This section is also being changed to provide that the applicable interest rate will be the one in effect at the time the loan is made. A clarifying provision is being added stating that a loan will be deemed to be made as of the date of initial loan closing for the purpose of determining the applicable interest rate.

10. Section 885.415(n) is being amended to permit an incentive payment to general constructors so that they may share the benefits of savings in interest charges, taxes, and insurance stemming from earlier than estimated completion of construction.

Although far more extensive revisions to these regulations are being considered, because the statutory changes are remedial in nature, this final rule will be made effective upon publication, in order to provide Section 202 Applicants the benefits of these changes as soon as possible. Further, the changes involving Section 8 processing are needed at the earliest possible date to enable the Field Offices to proceed with orderly processing of the Section 8 proposals for Section 202 projects for which fund reservations had been made during the 1976 Fiscal Year and Transition Quarter ending September 30, 1976. These changes also will apply to those proposals which receive fund reservations in following years.

The Department has determined that this amendment will not have a significant impact upon the quality of the environment. A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this final rule have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, 24 CFR, Part 885 Subpart A is amended as follows:

1. Section 885.3 is revised to read:

§ 885.3 Applicability of Parts 880 and 881.

To determine whether a project for which a direct loan is requested under this part complies with the requirements of the Section 8 Housing Assistance Payments Program—New Construction or Section 8 Housing Assistance Payments Programs—Substantial Rehabilitation, the provisions of Part 880 and 881 of this chapter shall apply to the extent that such provisions are not inconsistent with the provisions of Part 885.

2. Section 885.5 is amended to read:

* * * * *

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

* * * * *

Elderly or Handicapped Families means (a) families of two or more persons the head of which (or his/her spouse) is sixty-two years of age or over or is handicapped, or (b) the surviving member or members of any family described in (a) who were living in a unit assisted under the Section 202 program,

with the deceased member of the family at the time of his or her death, or (c) a single person who is sixty-two years of age or over or who is handicapped or (d) two or more elderly or handicapped persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certification provided by the resident or prospective resident, to be essential to their care or well being.

* * * * *

3. Section 885.215 is amended by the addition of a new paragraph (e).

§ 885.215 Approval of requests for fund reservations.

* * * * *

(e) The Assistant Secretary or field office may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing of a loan, subject to the availability of loan authority.

4. Section 885.315 is amended by revising paragraphs (c) and (d)(1)(i) to read:

§ 885.315 Screening and evaluation of preliminary proposals.

* * * * *

(c) Evaluation of Preliminary Proposals by the Field Office. The Field Office may begin its evaluation of proposals upon receipt, but the evaluation may not be completed until the response periods referred to in paragraph (b) of the section have ended. The Preliminary Proposal will be evaluated by the Field Office based on those factors which may be necessary to determine the acceptability of the location (site), acceptability of the design concept, the market value of the site, compliance with the Fair Market Rent Limits, and the comments, if any, received from the appropriate A–95 clearinghouse and the unit of general local government. However, analysis of Preliminary Proposals for Section 8 contract authority for less than all of the rental dwelling units should indicate that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project.

(d) * * *

(1) * * *

(i) The Borrower's proposed Contract Rents fall within the Fair Market Rent Limits. The proposed Contract Rents submitted by the Borrower shall be evaluated and approved at the Final Proposal stage." * * *

* * * * *

5. A new § 885.320 under Subpart C is added:

§ 885.320 Final proposal.

(a) Any Contract Rents which are or have been proposed by a Borrower in its Preliminary Proposal or approved by HUD pursuant to the Preliminary Proposal submission may be modified in the Final Proposal, or at any time prior to execution of the Agreement to Enter into Housing Assistance Payments Contract.

(b) The evaluation by HUD of a Final Proposal submitted by a Borrower shall include, in addition to the items listed in § 880.210 for New Construction and §881.210 for Substantial Rehabilitation, the Contract Rents and financial feasibility of the project, based upon the criteria set forth in § 885.325 of this Part.

(c) Notification of the Borrower of approval of its Final Proposal shall include the Contract Rents acceptable to HUD, and if lower than the rents proposed by the Borrower the reasons for the reduction.

6. A new § 885.325 is also added:

§ 885.325 Contract rents determined acceptable to HUD at final proposal.

Sections 880.108(b) (New Construction) and 881.108(b) (Substantial Rehabilitation) of the Section 8 Regulations are not applicable to Section 202 projects in which units are eligible for occupancy under the Section 8 Housing Assistance Payments Program. Contract Rents will be established within the applicable Fair Market Rent Limits in the Final Proposal pursuant to § 880.108(a) or § 881.108(a) and will be no higher than the rents determined by HUD to be necessary to cover operating costs, including debt service on the Section 202 loan, and reasonable reserves as approved by HUD. In the case of Proposals for projects with Section 8 contract authority for less than all of the rental dwelling units, these rents must be within such levels that sufficient market demand is anticipated for the unsubsidized portion to assure the feasibility of the project.

7. Section 885.410 is amended by revising paragraphs (a) and (b) to read:

§ 885.410 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of section 202 Fund Reservation, including any increase approved by the Assistant Secretary or field office prior to the final closing of a loan; Provided, however, that the amount of financing provided shall not exceed the lesser of (1) the maximum mortgage amount that would apply under § 231.3 or 231.4 (b) and (c) of Chapter II of this title if the mortgage were insured under section 231 of the National Housing Act, or (2) the total Development Cost of the project.

(b) The loan shall bear interest at a rate established by the Secretary by adding: (1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year next preceding the date on which the loan is made; plus (2) an allowance to cover administrative costs and probable losses under the program, which allowance has been determined by the Secretary to be one percent (1 percent) per annum during the construction period, and one half of one percent (.5 percent) thereafter. Loans committed to be made by the Assistant Secretary shall bear interest at the rate in effect at the time a loan is made. A loan shall be deemed to be made as of the date of the initial loan closing pursuant to § 885.415, except that any loans made on and after August 3, 1976, and prior to October 1, 1976, shall bear interest at the rate stated in the next sentence. The interest rate applicable to loans made between August 3, 1976, and September 30, 1977, shall be seven and three-eighths percent (7⅜ percent) per annum during the construction period and six and seven-eighths percent (6⅞ percent) thereafter. The interest rate applicable to subsequent fiscal years shall be published in the FEDERAL REGISTER. If a loan is made in a fiscal year other than that fiscal year in which the application is processed, and the interest rate for the year in which the loan is made is different from the rate used for processing, HUD will determine whether or not reprocessing is necessary.

* * * * *

8. Section 885.415(n) is revised to read as follows:

§ 885.415 Requirements prior to initial disbursement of loan.

* * * * *

(n) A Construction or Substantial Rehabilitation Contract between the Borrower and General Contractor, on a form to be prescribed by the Assistant Secretary, which Contract shall be in the form of a cost plus contract which shall provide for the payment of the actual cost of construction or substantial rehabilitation not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by HUD for earlier than estimated completion. The Contract shall be supplemented by such Cost or Trade Payment Breakdown and General Conditions as the Assistant Secretary may prescribe.

* * * * *

Effective date: These amendments are effective on January 28, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2451 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing

■

LEASE AND GRIEVANCE PROCEDURES

Title 24—Housing and Urban Development
Urban Development

CHAPTER VIII—LOW-INCOME PUBLIC HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-344]

PART 866—LEASE AND GRIEVANCE PROCEDURES

Subpart A—Dwelling Leases, Procedures and Requirements

On March 10, 1976, a notice of proposed rule was published in the FEDERAL REGISTER (41 CFR 10313) which would amend Title 24, Chapter VIII, Part 866, Subpart A, Dwelling Leases, Procedures and Requirements by extending the time for compliance by Public Housing Agencies, clarifying provisions giving rise to inquiries, and correcting editorial errors. The Department received five comments in response to the Proposed Rule. Three of the comments dealt with parts of Subpart A that are not proposed for change.

The two responsive comments were directed to § 866.2, the extension of time until February 16, 1977, for implementation of this Subpart. One supported the Proposed Rule, and the other opposed it. The extension was proposed for two reasons. First, it was felt that this Subpart, together with Part 866, Subpart B (Grievance Procedures and Requirements) should be effective simultaneously. Second, prior to publication of this proposal, the Department received numerous requests from both Public Housing Agencies and tenant representatives requesting an extension of time to assure proper compliance. The Department has determined that the time for compliance should be extended.

The Secretary has determined that Title 24, Chapter VIII, Part 866, Subpart A does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

It is hereby certified that the economic and inflationary impacts of Part 866, Subpart A have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart A is amended as set forth below.

§ 866.1 [Amended]

1. Section 866.1 is amended by deleting the word "Tribal" immediately after the word "Indian."

§ 866.2 [Amended]

2. Section 866.2 is amended by deleting the words "within six months from the effective date of these regulations" immediately after the words "each PHA" and substituting the words "by February 16, 1977."

3. Section 866.4(b)(4) is amended to read as follows:

§ 866.4 Lease requirements.

* * * * *

(b) * * *

(4) The lease shall provide that charges assessed under paragraph (b)(2) of this section shall not become due and collectible before the first day of the second month following the month in which the charge is incurred.

Effective Date: These amendments are effective on February 16, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2465 Filed 1-27-77;8:45 am]

[Docket No. R-77-344]

PART 866—LEASE AND GRIEVANCE PROCEDURES

Subpart B—Grievance Procedures and Requirements

On March 10, 1976, a notice of proposed rule was published in the FEDERAL REGISTER (41 FR 10313) which would amend Title 24, Chapter VIII, Part 866, Subpart B, Grievance Procedures and Requirements, by extending the time for compliance by Public Housing Agencies and correcting an editorial error. The Department received five comments in response to this proposal. Three of the comments dealt with parts of Subpart B that are not proposed for change.

The two responsive comments were directed to Section 866.52, the extension of time for implementation. One supported and one opposed the Proposed Rule. The extension was proposed for two reasons. First, it was felt that this regulation, together with Part 866, Subpart A (Dwelling Leases, Procedures and Requirements) should be effective simultaneously. Second, prior to publication of this proposal, the Department received numerous requests from both Public Housing Agencies and tenant representatives requesting an extension of time to assure proper compliance. The Department has determined to extend the time for compliance.

Because some PHAs have applied directly to the HUD Central Office for waivers under § 866.59 rather than to the HUD Field Offices normally conducting day-to-day business with them, the Department is adopting an amendment to § 866.59 which was not published in the Proposed Rule on March 10, 1976. Section 866.59 as adopted August 7, 1975 (40 FR 33409) provided that a waiver of Subpart B to permit PHAs to utilize existing Grievance Procedures may be granted under named conditions by "the Secretary or his designee." The Amendment provides that the waiver may be granted by the Directors of the HUD Field Office with which the particular PHA normally transacts its low-income housing business.

The Secretary has determined that Part 866, Subpart B does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the Office of Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C.

It is hereby certified that the economic and inflationary impacts of Part 866, Subpart B have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart B is amended as follows.

§ 866.52 [Amended]

1. Section 866.52 is amended by deleting the words "Within ninety days of the effective date of this Subpart" immediately before the words "each PHA" and substituting the words "by February 16, 1977."

§ 866.55 [Amended]

2. Section 866.55(b)(2) is amended by deleting the reference "(a)" immediately after the word "paragraph" and substituting the reference "(b)."

§ 866.59 [Amended]

1. Section 866.59 is amended by deleting the words "the Secretary or his designee" and substituting "the Director of the HUD Field Office with which the PHA normally transacts its low-income housing business."

Effective Date: February 16, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.77-2466 Filed 1-27-77;8:45 am]

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FRIDAY, JANUARY 28, 1977

PART V

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Tentative Draft Agreement Between NFIA and the Federal Insurance Administration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1909]

[Docket No. N-77-695]

NATIONAL FLOOD INSURANCE PROGRAM

Tentative Draft Agreement Between NFIA and the Federal Insurance Administration

The Department hereby publishes for public comment a form of draft tentative agreement negotiated between the Department and the National Flood Insurers Association (NFIA). The relationship between the Department and NFIA is governed by the National Flood Insurance Act of 1968 (Pub. L. 90-448) and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, which established the National Flood Insurance Program.

Pursuant to the National Flood Insurance Act of 1968, the Department and NFIA, on June 6, 1969, entered into an agreement which has been amended several times and is currently in effect. Should the draft tentative agreement published herewith be finalized and executed, it would replace the current agreement.

The form of agreement published for comment is a draft tentative agreement which has been negotiated between the Department and NFIA during the past five months. While the Department and NFIA have reached tentative agreement, subject to public comment, on the provisions of the draft agreement, the Department and NFIA are each free to renegotiate all provisions of the draft agreement.

A major outstanding issue as to which the Department and NFIA did not reach tentative agreement concerns the effect of regulations and other directives issued by the Administrator on the obligations undertaken by NFIA under the Agreement.

HUD's position throughout the course of these negotiations has been that the Secretary has such regulatory authority over the insurance component of the program and NFIA as is necessary to provide continuing involvement in and supervision of NFIA. HUD maintains that, when agreement on an issue cannot be reached through consultation between the parties, final resolution rests with the Secretary, and the Secretary cannot enter into a contract under which the Secretary would voluntarily agree to contract away the powers of Government.

On the other hand, NFIA's position in the negotiations has been that, while it recognizes that the Secretary has oversight responsibilities under the Act, the relationship between NFIA and the Secretary is contractual in nature and the Secretary may not issue regulations or directives which unilaterally amend that contractual relationship or impose extracontractual obligations on NFIA.

In the Department's view, the term "operational responsibilities" used with reference to NFIA in several articles, but not defined in the draft agreement, would have to be clearly defined in a final agreement to conform to the resolution of this issue. The Department believes that the term should be defined to refer only to the functional aspects of the insurance component, such as the issuing of the policies, collecting and accounting for the premiums, investigating and paying claims, and similar functions. NFIA maintains that such a characterization reduces NFIA to the status of a mere fiscal agent and that the Act contemplates a partnership arrangement between the government and the industry.

HUD and NFIA have not reached tentative agreement on contract provisions which would satisfactorily resolve this issue.

There are some additional, and major, issues still being negotiated by the parties which have not yet resulted in tentative agreement. As noted in the draft tentative agreement, provisions are not included regarding contracting requirements applicable to NFIA with respect to operation of the Computer System. Whether the operation of the Computer System will be contracted out, and if so, what method of contracting will be used, are matters as to which the parties have not reached tentative agreement. The Department's position is that the Computer System should be operated by an independent firm rather than by NFIA to assure transferability of the Computer System to HUD or HUD's designee at all times. NFIA is of the view that the agreement between the Department and NFIA should not require NFIA to enter into such a contract, but should leave such determination to NFIA as a matter of business judgment, and that transferability of the Computer System can be assured without contracting the system out to a third party. Public comment is invited on this issue.

Interested persons are invited to comment on the draft tentative agreement by submitting their comments to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7st Street, SW., Washington, D.C. 20410. Comments received on or before February 28, 1977 will be considered.

The draft agreement is set forth hereinafter.

(42 U.S.C. 3535(d).)

Issued at Washington, D.C., January 19, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

Approved:

JOHN B. RHINELANDER,
Under Secretary of Housing and Urban Development.

TENTATIVE DRAFT AGREEMENT BETWEEN NFIA AND THE ADMINISTRATION

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AGREEMENT

This Agreement dated _____, by and between the National Flood Insurers Association, an unincorporated association of insurers (hereinafter referred to as "NFIA") with its headquarters at 1755 S. Jefferson Davis Highway, Arlington, Virginia, and the Department of Housing and Urban Development of the United States Government (hereinafter referred to as the "Administrator");

Whereas the Department of Housing and Urban Development is authorized by the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Proteciton Act of 1973, as amended, both of which are codified at 42 U.S.C. 4001 *et seq.* (hereinafter referred to as "the Act"), to establish and carry out a National Flood Insurance Program to be made available throughout the Nation for the protection of property owners; and

Whereas the Secretary of the Department of Housing and Urban Development has delegated the authority to establish and operate such program under the Act to the Federal Insurance Administrator; and

Whereas the Administrator desires to enter into a revised agreement with NFIA pursuant to 42 U.S.C. 4051-4056, under which NFIA will carry out the operation of certain aspects of the National Flood Insurance Program and under which the relationship between the Administrator and NFIA, and the respective obligations of each, will be set forth; and

Whereas NFIA has been formed to constitute a pool of insurers in order to participate in the National Flood Insurance Program and desires to enter into an agreement with the Administrator;

Now, therefore, the parties agree as follows:

Article I. Contractual responsibilities of the parties.

A. *General.* This Agreement is entered into between NFIA and the Administrator under Part A of the Act.

B. *Contractual Responsibility of NFIA.* NFIA agrees, by the terms of this Agreement, to provide a continuous program of flood insurance coverage authorized under Chapter I of the Act, and to assume, as provided specifically in Article IV of this Agreement, a reasonable proportion of the financial responsibility for payment of operating costs, losses, and loss adjustment expenses incurred in the operation of the National Flood Insurance Program. In carrying out its operational and financial responsibilities under this Agreement NFIA shall fulfill the following obligations and functions:

1. Provision of risk capital and participation in risk of loss as set forth in Article IV.

2. Issuance and servicing of flood insurance policies as provided in Article III.

3. Adjustment and payment of claims as provided in Article VI.

4. Letting, administration, and termination of contracts as provided in Article VIII.

5. Distribution of flood insurance maps to persons who request such maps.

c. *Contractual Responsibility of the Administrator.* 1. *Financial Assistance.* The Administrator shall provide to NFIA program payments, reinsurance coverage, and operating allowances as set forth in Article IV.

3. *Notice and Consultation.* The Administrator shall provide NFIA the advance notice and shall engage in the consultation provided for in Article V.

4. *Designation of Communities.* For all communities presently participating in the program and for all communities which shall, in the future, participate in the program, the Administrator shall indicate to NFIA whether the insurance policies shall be issued pursuant to the regular program or emergency program and whether the community is designated as coastal or inland.

5. *Flood Maps.* The Administrator shall develop flood insurance maps and issue NFIA an adequate supply for its distribution.

Article II. Organization of NFIA.

A. *Membership.* 1. *General.* NFIA shall keep its membership open to all insurers meeting the requirements prescribed by the Administrator for insurance companies and other insurers for financial participation and risk sharing in NFIA. No insurance company or other insurer meeting the requirements so prescribed and indicating an intention to participate in the flood insurance program on a risk-sharing basis shall be excluded from participation in the pool, providing that NFIA may require that no insurers desiring such participation shall be admitted to membership in NFIA for a term less than a full accounting period or subsequent to the first day of any accounting period.

2. *Changes in Membership.* Changes in NFIA's membership, whether additions or withdrawals, shall not alter, amend, or affect the provisions of this Agreement. NFIA shall promptly advise the Administrator of all additions to and withdrawals from its membership. Nothing in this Agreement shall limit the right of any member of NFIA to reduce or terminate its financial participation or risk sharing in NFIA as of the end of any accounting period.

B. *Amendments to NFIA Constitution and Dissolution of NFIA.* NFIA shall give the Administrator at least thirty days' advance written notice of any meeting of the NFIA Executive Committee or Membership called to consider any amendment to NFIA's Constitution or dissolution of NFIA.

C. *NFIA Committee Meetings and Public Hearings.* 1. NFIA shall invite the Administrator or his representative to attend meetings of the Executive Committee or subcommittees thereof by giving the Administrator the same notice of meeting as is given to the members of the Executive Committee or subcommittee.

2. NFIA shall promptly notify the Administrator in writing of all actions taken by the Executive Committee at its meetings. In addition, NFIA shall furnish the Administrator copies of written agenda and formal minutes of meetings of the Executive Committee and subcommittees.

3. NFIA and the Administrator shall conduct at least annually a joint Public Meeting, at which time members of the public may express their views, opinions, and suggestions for the Program. Notice to the public shall be as determined by the Administrator and NFLA at the time of the proposed meetings.

4. NFIA and the Administrator shall make available to any interested person who requests them copies of all formal actions taken by the Administrator and NFIA relating to the Program.

5. Nothing herein shall preclude the NFIA Executive Committee or any subcommittee from meeting in Executive Session for such purposes and at such times as it, in its sole discretion, determines to be necessary or appropriate. NFIA shall promptly notify the Administrator in writing of all actions taken at any such meeting, but shall not be required to furnish the Administrator formal minutes of such meetings.

Article III. Issuance of policies.

A. *Issuance.* 1. NFIA shall arrange for the issuance of policies of flood insurance and renewals thereof to any person or organization who qualifies for such coverage in accordance with Regulations promulgated by the Administrator pursuant to Section 1306(a) of the Act. NFIA shall have the operational responsibility for the issuance, renewal, and other servicing of standard flood insurance policies, and for the collection and investment of flood insurance premiums.

2. All such policies of insurance shall conform with the Regulations prescribed by the Administrator and this Agreement and shall be issued in the form prescribed by the Administrator in the Regulations. The amount of coverage provided under policies of flood insurance issued by NFIA shall not exceed the dollar limits set forth in Section 1306(b) of the Act.

3. Policies of flood insurance shall be issued in consideration of such premiums and in such States or areas or subdivisions thereof as may be designated by the Administrator pursuant to the Act.

4. A standard flood insurance policyholder whose property has been determined not to be in a special hazard area after a map revision or a Letter of Map Amendment under the Regulations may cancel the policy within the current policy year, provided: (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance; and (b) his property was located in an identified special flood hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, NFIA shall refund the full gross premium, including any agents commissions paid by the insured, for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. If NFIA refunds a premium pursuant to this subparagraph, the Administrator shall reimburse NFIA for the full amount of the refunded agents commission, and NFIA shall allow the agent to retain his commission as fully earned.

B. *Agreement Not to Compete.* In an area in which the Administrator authorizes the offering of flood insurance under this Agreement, and subject to the coverage limits specified in the Act, all flood insurance offered by NFIA or any member or non-member company authorized to write under this program shall be written under this Agreement and in accordance with the terms of this Agreement. The Administrator shall prescribe provisions in the Regulations setting forth this requirement as a condition of insurance company participation in the National Flood Insurance Program, but such restrictions shall not be construed to apply to flood insurance written specifically as excess coverage above the program limits set forth in the Act.

Article IV—Financial provisions.

A. *Definitions.* The following terms as used in this Article shall have the meaning ascribed below:

1. Accounting Period means any annual period during which this Agreement is in effect.

2. Operating Costs means all costs for the accounting period incurred in the offering, selling and servicing of policies of flood insurance including administrative costs of the Association, loss adjustment expenses, producers commissions, state premium taxes and similar charges and reinsurance premiums as defined under Paragraph D.7. of Article IV but shall not include any amount for operating allowances.

3. Incurred Losses means the aggregate of all losses on proved and approved claims incurred under all policies with

an effective date during the accounting period.

4. Participation Year means all policy periods for all policies with effective dates during the accounting period.

5. Investment Income means interest earned during the accounting period on NFIA investments.

6. Shareable Operating Costs means operating costs less producers commissions, state premium taxes and reinsurance premium payments.

7. Policyholder Premiums means the aggregate of all flood insurance premiums paid or payable by insureds for flood insurance.

8. Policyholder Earned Premiums means the aggregate of flood insurance premiums paid or payable by insureds for flood insurance for policy periods which have expired.

9. Operating Allowance means the amount the Association shall retain in accordance with Paragraph D.4, D.5 of Article IV.

10. Risk Capital means the amount of funds NFIA member companies shall put at risk to pay for NFIA negative operating balance for a participation year as determined in Paragraph D.6 of Article IV.

11. Loss Adjustment Expenses means all expenses incurred in the settlement of flood insurance incurred losses.

12. Negative Operating Balance Reduced by Loss Reinsurance Payments means the amount the NFIA pays the Administrator from members' risk capital as the result of the final adjustment of a participation year.

B. *Collection and Investment of Policyholder Premiums.* 1. NFIA shall have the operational responsibility for the collection and interim investment of premiums paid by policyholders.

2. Until a final adjustment is made by NFIA and the Administrator for the Participation Year as provided in paragraph F below, policyholder premiums collected by NFIA during such participation year except for those amounts necessarily on hand for daily operations shall be invested in obligations of or fully guaranteed by the United States or any agency or instrumentality thereof.

C. *Program Payments.* 1. During an Accounting Period, NFIA shall pay operating costs and make incurred loss payments from policyholder premiums collected and premium investment income, to the extent such sources are adequate for such purposes.

2. In recognition that policyholder premiums and investment income will be from time to time insufficient to cover operating costs and incurred losses under the Program, the Administrator shall issue a Letter of Credit and Amendments thereto against which NFIA may draw to meet operating costs and incurred losses under the Program. The purpose of this procedure is to keep NFIA in a positive operating balance with respect to operating costs and incurred losses under the Program in order to make flood insurance available under reasonable terms and conditions to the public.

NFIA will be authorized to make daily or other periodic drawdowns against the Letter of Credit for the following purposes:

(i) Payment of operating costs incurred by NFIA;

(ii) Payment of incurred flood insurance losses;

(iii) Payment of expenses incurred by NFIA other than (i) and (ii) pursuant to separate agreements which are deemed reasonable by the Administrator and the Association.

Comment: Procedures for the Letter of Credit remain to be established. Letter of Credit Procedures shall not be used for dispute resolutions.

D. *Determination of NFIA's Profit or Loss.* 1. In recognition of the principle that the risk of the National Flood Insurance Program shall be shared by the insurance industry and the Federal Goverment, NFIA's profit or loss for a particular participation year shall be determined by taking the sum of (i) the Federal share of claims payments plus shareable operating costs (such share to be determined in accordance with the "Balancing Formula" set forth in paragraph D.2 below), and (ii) earned policyholder premium ascribed to such participation year, and (iii) investment income earned by NFIA during the first twelve months of such participation year and subtracting from such sum incurred losses and operating costs for such participation year.

2. The "balancing formula" used to calculate NFIA's share of incurred losses and shareable operating costs for the participation year being settled is as follows:

$$R_n=\frac{\sum_{i=1}^{n} A_i \quad \sum_{i=1}^{n-1}(A_i-C_i)+\sum_{i=1}^{n} I_i-(S\times D_n)}{\sum_{i=1}^{n} B_i \qquad A_n\div\left(\sum_{i=1}^{n} A_i\div\sum_{i=1}^{n} B_i\right)}$$

R_n=NFIA's Sharing Ratio in participation year n
$1-R_n$=Administrator's Sharing Ratio in participation year n
A_i=Participation year earned policyholder premium less premium taxes and similar charges, producers commissions, reinsurance premiums and loaded for underwriting profit of 5% of policyholder premiums
B_i=Total actual incurred losses and shareable operating costs for a participation year less reinsurance premium (estimated ultimate payments)
C_i=NFIA's actual share of incurred losses and shareable operating costs (estimated ultimate payment) for a participation year
I_i=Net investment income earned during the first 12 months of a participation year
S=.20
D_n=Policyholder premium in participation year n
Limits:

(a) $$(R_{[n-1]}+.10\geq R_n\geq(R_{[n-1]}-.15)$$

(b) $$.95\geq R_n\geq.05$$

(c) $$\sum_{i=1}^{n-1}(A_i-C_i)\leq.75\ D_{n-1}$$

Symbols:
n=Current year
n-1=Previous year
i=1=the 1st year of the National Flood Insurance Program

3. If for the participation year being settled, using the computation referred to in Paragraph D.1., NFIA has a negative operating balance in excess of (i) 25 percent (25%) of policyholder premiums for such participation year, or (ii) 125 percent (125%) of the Trust and Liability Account as determined at the settlement of the prior participation year, whichever is greater, the Administrator shall pay the amount of such excess to NFIA as excess loss reinsurance payments.

4. (a) If for the participation year being settled, using the computation referred to in Paragraph D.1., NFIA has a positive operating balance it may retain out of such balance as an operating allowance, for such uses as its Constitution may permit, an amount not to exceed five percent (5%) of the policyholder premiums for that participation year. If for the participation year being settled, NFIA does not have a positive operating balance sufficient to retain an operating allowance equal to five percent (5%) of the policyholder premiums for that participation year, the Administrator shall pay to NFIA from the Trust and Liability Account an amount not exceeding the balance of such account, sufficient to provide NFIA an operating allowance equal to five percent (5%) of policyholder premiums for such period.

(b) The amount, if any, by which NFIA's operating balance for the participation year exceeds five percent (5%) of policyholder premiums shall be paid to the Administrator to be held in the Trust and Liability Account for the uses set forth below.

5. If for the participation year being settled, NFIA has a negative operating balance, using the computation referred to in Paragraph D.1. reduced by the loss reinsurance payments computed in Paragraph D.3. which is less than or equal to the Trust and Liability Account, the Administrator shall pay to NFIA from the Trust and Liability Account an amount equal to such reduced negative operating balance. If, after the payment of such amount, there remains a positive balance in the Trust and Liability Account, NFIA shall be paid therefrom an operating allowance equal to the lesser of (i) five percent (5%) of policyholder premiums for such par-

ticipation year, or (ii) the balance in the Trust and Liability Account, to be used as NFIA's Constitution may permit.

6. If for the participation year being settled, NFIA has a negative operating balance, using the computation referred to in Paragraph D.1. reduced by the loss reinsurance payments computed under Paragraph D.3., which is more than the Trust and Liability Account, the Administrator shall pay to NFIA the balance in the Trust and Liability Account.

7. For the Loss Reinsurance referred to in paragraph D.3. above, NFIA shall pay to the Administrator a reinsurance premium in an amount and in the manner as follows:

(a) The reinsurance premium shall be an amount equal to the sum of:

(i) Four and one-tenth per centum (4.1%) of the policyholder premiums for flood insurance in areas designated by the Administrator as areas subject to inland flooding;

(ii) Eighteen and three-tenths per centum (18.3%) of the policyholder premiums for flood insurance provided in areas designated by the Administrator as subject to coastal flooding.

(b) Premiums for reinsurance against excess flood losses for each accounting period shall be paid in quarterly installments which shall be due thirty days after each quarter, or NFIA may, at its option, credit the reinsurance premiums due against the program payments requested of the Administrator by NFIA pursuant to paragraph C of this Article.

(c) Each such quarterly installment shall be an amount equal to a percentage of all policyholder premiums for such quarter, which percentage figure shall be determined by dividing reinsurance premiums paid by NFIA in the preceding accounting period by total policyholder premiums for the same period. The premiums paid in quarterly installments shall be provisional only and, in accordance with the provisions of paragraph 7(a) above, shall be adjusted at the conclusion of the participation year.

E. *Trust and Liability Account.* 1. Funds in the Trust and Liability Account are held by the Administrator as though in trust solely for the purposes of meeting NFIA's share of operating costs, incurred losses and operating allowances as determined in paragraphs D.4., D.5., and D.6. above and for making payment to the Administrator as provided in paragraph E.2. below. Until paid out for such purposes any such funds invested shall be invested only in obligations of or fully guaranteed by the United States or any agency or instrumentality thereof. The income from such investments shall be available for the same purposes as the principal thereof, and for no other purpose. Funds shall be held in the Trust and Liability Account in accordance with applicable law. The Administrator shall guarantee payments to NFIA from such account under paragraphs D.5., and D.6. mentioned above. Any such funds remaining at the termination of this Agreement (including any renewal thereof) shall, after the payment of all obligations incurred for the most recent participation year, be paid into the National Flood Insurance Fund. The Administrator shall report annually to NFIA the balance held in trust, including the interest earned on such amounts.

2. In the event that the balance in the Trust and Liability Account, after complete adjustment of a participation year as provided for below in this article, exceeds 75 per cent of the participation year's policyholders premiums, such excess shall be paid out of the Trust and Liability Account into the National Flood Insurance Fund, to be used by the Administrator, at his discretion, for such purposes as are authorized therefore in the Act.

F. *Final Adjustment for Participation Year.* 1. Not later than 6 months after the end of a participation year, NFIA and the Administrator shall make a final adjustment of accounts for such participation year by using the Balancing Formula and making the computations and payments provided for in paragraph D of this Article, and excluding any operating costs and incurred losses finally determined not to be shareable under paragraph J below.

2. For purposes of this paragraph F, payments made by NFIA pursuant to settlements made and loss adjustment expenses incurred by NFIA under paragraph A of Article VI shall, subject to audit, be binding on the Administrator.

G. *Risk Capital.* NFIA shall provide a minimum of $48 million in risk capital subscribed by its member companies for the first full participation year under this Agreement. Thereafter, NFIA shall advise the Administrator, on or before the last day of the sixth month of each Accounting Period, of the minimum aggregate amount of risk capital of NFIA for the succeeding participation year and of the amount of risk capital subscribed by each member.

H. *Government Corporation Control Act.* It is acknowledged and agreed that NFIA is not owned or controlled by the United States government or any agency or instrumentality thereof. However, if, as a result of the contractual relationship created by this Agreement, the Administrator is obligated to comply with any requirements of the Government Corporation Control Act (31 U.S.C. § 847–849), NFIA will cooperate with the Administrator by furnishing such records or documents as the Administrator may require for such purposes.

I. *Bankruptcy and Insolvency.* All program payments, reinsurance payments and operating allowances due the NFIA hereunder shall be made to NFIA without diminution because of the bankruptcy or insolvency of any NFIA member.

J. (a) Any dispute arising out of the Administrator's failure or refusal to make any payment to NFIA under Paragraph C or F of this Article shall be resolved as provided in this Paragraph.

(b) At NFIA's request the Administrator shall state his decision regarding payment in writing and furnish a copy to NFIA. The decision of the Administrator shall be final and conclusive unless within 30 days from the date of receipt of such copy, NFIA furnishes to the Administrator a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals (other than the Administrator) shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, NFIA shall be afforded an opportunity to be heard and to offer evidence in support of its appeal before an Administrative Law Judge of the Department. Pending final decision of a dispute hereunder, the Administrator shall not withhold any undisputed payments or portions thereof due NFIA under Paragraph C or F of this Article.

Article V. Consultation and notice.

A. *General Consultation.* The complexity of the National Flood Insurance Program and the cooperative nature of the government-industry relationship established by the Act and this Agreement require almost continuous consultation between the Administrator and NFIA on issues of major importance affecting the National Flood Insurance Program and the relationship between the parties. Consultations between the Administrator and NFIA shall be effectuated through correspondence, telephonic conversations, meetings and other communications so as to inform the Administrator and NFIA of matters arising which relate to this Agreement and the relationship between the Administrator and NFIA under this Agreement and to give each party an opportunity to respond to such matters.

B. *Further Consultation.* In addition to engaging in such general consultation under paragraph A, the Administrator and NFIA shall follow the procedures set forth below in paragraph C with respect to:

1. Any Regulation, rule, directive, or order issued by the Administrator with respect to the National Flood Insurance Program, issued by the Administrator other than (i) an Interpretation or Clarification of the Standard Flood Insurance Policy, and (ii) routine and recurring rules or regulations as agreed to from time to time.

2. Any determination by the Administrator of chargeable premium rates under Section 1308 of the Act;

3. Any NFIA membership requirement established by the Administrator under Article II;

4. Any notice of termination given by either party under Article XVI;

5. Implementation by the Administrator of a government program under Part B of Chapter II of the Act;

C. *Procedure for Further Consultation.* With respect to any proposed action described in paragraph B, the following procedures shall apply:

1. The Administrator shall give NFIA advance written notice of any proposed action under paragraph B not less than

thirty (30) days before solicitation of public comment, or, if public comment is not solicited, not less than thirty (30) days before the proposed action is to take effect. NFIA shall give the Administrator advance written notice of any proposed action under paragraph B.4 not less than thirty (30) days before the proposed action is to take effect. The Notice shall contain a brief explanation of the nature of the proposed action and of the general basis, reasoning, or calculation upon which the proposed action is predicated, and shall identify the staff member or members who may be contacted by the other party for further information regarding the proposed action.

2. Where practicable, the party proposing the action shall, at the request of the other party, meet in person with representatives of the other party to receive, discuss and consider the other party's views of the proposed action.

3. In the case of a Regulation, rule, directive, or order proposed to be issued by the Administrator, the Administrator shall, in addition to the notice required by subparagraph 2(a), provide a reasonable opportunity to NFIA to review and comment upon the specific language of the proposed Regulation, rule, directive or order before it is published for public comment, or, if it is not published for public comment, before it is published for effect.

D. *Timely Notice.* The Administrator shall give NFIA timely advance notice of the issuance or revision of any flood insurance map; the final establishment or modification of any premium rate, the conversion of any community to the regular program, the suspension from the program of any community, and the initial participation of any community in the program.

E. *Construction.* Nothing in this Article shall be construed as limiting any legal authority the Administrator may have to make an order, directive, rule or interpretation apply, after it has been issued or published for effect, to a period or periods prior to the date of issuance or publication for effect.

Article VI. Adjustment and payment of claims, interpretation and clarification of insurance policies.

A. *General.* NFIA shall have the operational responsibility for the adjustments and payment of all claims arising under flood insurance policies. NFIA shall arrange for the prompt processing, investigation, adjustment and settlement of all such claims through appropriate insurance adjustment organizations.

B. *Manuals.* 1. NFIA shall change outstanding manuals, handbooks, guidelines, and related materials concerning the adjustment of claims to conform them with this Agreement, with Interpretations and Clarifications issued by the Administrator pursuant to paragraph D of this Article VI, and with the Regulations of the Administrator and shall make such other changes of technical nature as are requested by the Administrator. Prior to issuance of a proposed revision to any such manual, NFIA shall submit the proposed revision to the Administrator for his review and comment. NFIA shall incorporate in the proposed revision all changes of a technical nature requested by the Administrator, and shall give due consideration to all other changes suggested by the Administrator. All manuals, handbooks, guidelines and related materials outstanding on the date of this Agreement shall be reviewed by the Administrator and NFIA for the purposes of this paragraph.

2. For the purpose of the foregoing subparagraph, the term "changes of a technical nature" shall mean changes requested by the Administrator to provisions setting forth or describing the terms of the Standard Flood Insurance Policy, the Act, premium rates, provisions of the Regulations or this Agreement.

C. *Monitoring of Claims Processing.* 1. NFIA shall arrange to review with the representatives of the Administrator on a regular basis a sampling or other selection of files chosen by the Administrator relating to claims adjusted by or through NFIA. The Administrator may convene such a meeting at any time at the offices of the Administrator, NFIA or the Servicing Company upon notice to NFIA of not less than 48 hours. The purpose of this review is to provide the Administrator with current information regarding the basis upon which claims are denied or adjusted. At the Administrator's request NFIA shall assemble any particular class or category of claims files for review at any such meeting, except to the extent such assembly presents severe practical difficulties.

2. NFIA shall require each servicing company to report to NFIA any claims or categories of claims which raise unusual or difficult problems of adjustment or which involve any unusual issue of contractual interpretation of the Standard Flood Insurance Policy. Any such claims or categories of claims shall immediately be reported by NFIA to the Administrator.

3. At the request of the Administrator, NFIA shall promptly provide to the Administrator a copy of the complete files, or any part thereof designated by the Administrator, relating to any claim or category of claims designated by the Administrator, and shall provide any information reasonably requested regarding claims.

4. Before the Administrator responds substantively to a complaint, request, or other inquiry from any person regarding a claims matter, the Administrator shall first review the relevant claim file, if any NFIA shall arrange for the delivery of the file in a manner which permits the Administrator to respond on a timely basis. In the event that a complaint, request, or other inquiry requires that information be obtained from the other party, the party to whom the communication is initially directed shall provide a copy of such correspondence, if in writing, or a written summary of the oral communication if not in writing, to the other party. If the complaint, request, or inquiry is confidential in nature, or is otherwise subject to a privilege in law, the name and title of the initiating correspondent may be deleted.

D. *Resolutions of Ambiguities or Questions of Interpretation Under Standard Flood Insurance Policy.* 1. NFIA and the Administrator shall cooperate with each other as provided below in this paragraph D to achieve prompt and clear resolution of any disagreement regarding any issue of contractual interpretation of the Standard Flood Insurance Policy.

2. Whenever an issue which involves an unusual or difficult question of contractual interpretation of the Standard Flood Insurance Policy comes to the attention of either NFIA or the Administrator, NFIA or the Administrator shall bring the matter informally to the attention of the other immediately.

3. The following procedure shall apply to any issue of interpretation of the Standard Flood Insurance Policy as to which the Administrator and NFIA disagree:

(a) NFIA and the Administrator shall attempt informally, by telephone or otherwise, to resolve the issue of interpretation.

(b) If the issue of interpretation is not informally resolved pursuant to subparagraph 2(a) above, the Administrator may initiate the formal interpretation procedure of subparagraphs D-4 through D-10 by giving written notice thereof to NFIA.

4. (a) Upon initiation of the formal interpretation procedure set forth in subparagraphs D-4 through D-10 by the Administrator, NFIA shall promptly give the Administrator a written statement of NFIA's position as to the issue of interpretation of the Standard Flood Insurance Policy, including a full statement of the reasoning and legal basis for NFIA's position.

(b) The Administrator shall consider the position presented by NFIA under subparagraph D-4(a) above and engage in such further discussion with NFIA by meeting or otherwise as may be practicable. The Administrator shall advise NFIA in writing whether or not the Administrator concurs in the position communicated by NFIA pursuant to subparagraph D-3(a) above. If the Administrator does not concur in NFIA's position, the Administrator shall prepare a proposed Interpretation of the Standard Flood Insurance Policy and shall provide NFIA an advance copy of such Interpretation in draft prior to any final editing or revisions and give NFIA at least seven calendar days thereafter to present any further comments or views NFIA may have. Such draft Interpretation shall be accompanied by a draft legal opinion of the General Counsel of the Department of Housing and Urban Development.

(c) The Administrator shall give NFIA at least seven calendar days' notice, in addition to the comment period provided under subparagraph D-4(b) above, prior to the issuance for effect of any Interpretation and shall include with the notice a copy of the Interpretation proposed to be issued for effect subject to fi-

nal editing in light of comments by NFIA.

(d) Upon issuance of any Interpretation for effect the Administrator shall furnish NFIA a final legal opinion of the General Counsel of the Department of Housing and Urban Development supporting such Interpretation.

5. At NFIA's written request, the Administrator shall issue, in place of an Interpretation under subparagraph D–4, a Clarification (a revision of the specific language of the Standard Flood Insurance Policy) with a Federal Register preamble in the form of Exhibit B hereto, incorporating, by express provision in the Standard Flood Insurance Policy, the Interpretation of the Administrator under subparagraph D–4 above. Such written request by NFIA must be delivered to the Administrator within the additional notice period referred to in subparagraph D–4(c), and shall include NFIA's certification in writing, based on legal analysis, that the issuance of the Interpretation proposed under subparagraph D–4 would create a risk of substantial complications in the interpretation of insurance policies not related to the National Flood Insurance Program which contain identical or similar provisions to the provisions of the Standard Flood Insurance Policy as to which the issue of interpretation in question has arisen. In making such a certification, NFIA shall also consider whether a revision to the specific language of the Standard Flood Insurance Policy with corresponding redress and notification to policyholders and other administrative consequences, would or would not serve the objective of assisting the public. Prior to publishing a Clarification, the Administrator shall provide NFIA a draft of the Clarification and allow NFIA seven (7) calendar days in which to submit comments.

6. Upon final issuance for effect of an Interpretation under subparagraph D–4, or a Clarification under subparagraph D–5, NFIA shall apply such Interpretation or Clarification.

(a) In adjustment of all claims duly filed after the effective date of such Interpretation or Clarification;

(b) In adjustment of all claims duly filed after the effective date of such Interpretation or Clarification;

(c) If the Administrator so directs, in adjustment of all claims previously filed which arose out of occurrences within two years before the effective date of such Interpretation or Clarification, provided that the policyholder requests in writing, not later than sixty days after receiving notice of the Interpretation or Clarification under subparagraph D–7, that the claim be re-opened; and

(d) If the Administrator so directs, in adjustment of all other claims arising out of occurrences within two years before the effective date of such Interpretation of Clarification, provided that the policyholder files notice and proof of loss not later than sixty days after receiving notice of the Interpretation or Clarification under subparagraph D–7.

Nothing in this subparagraph D–6 shall limit any legal or equitable right which any policyholder may otherwise have to assert an earlier claim under an Interpretation or Clarification.

7. NFIA will distribute to servicing companies and adjustment organizations copies of Interpretations issued under subparagraph D–4 and Clarifications issued under subparagraph D–5. In addition, NFIA will provide notice of Interpretations and Clarifications issued under subparagraphs D–4 and D–5 to policyholders in connection with the mailing or renewal notices and the issuances of new policies.

8. Within a reasonable time following issuance of any Interpretation under subparagraph D–4 or any Clarification under subparagraph D–5, the Administrator shall determine the effect, if any, which the Interpretation or Clarification has had or may have on loss payments and actuarial premium rates, and shall make appropriate adjustments, if any, to actuarial rates. In making such determination the Administrator shall consider any information or views presented by NFIA. To facilitate this analysis, NFIA shall keep a record of any increased costs and losses which may result from the interpretation or clarification.

9. This Article VI applies only to Interpretations and Clarifications and has no application to changes in the Standard Flood Insurance Policy issued from time to time by the Administrator for prospective effect.

10. Interpretations and Clarifications of the Standard Flood Insurance Policy shall be issued only as provided in this Article VI.

Article VII. Litigation.

A. *Litigation Involving NFIA.* 1. *Litigation Against NFIA.* If NFIA, any NFIA member or NFIA contractor is made a defendant in any litigation which involves the National Flood Insurance Program, NFIA shall immediately notify the Administrator of such litigation. Such notice shall be accompanied by a copy of any pleading filed or received by NFIA to date of notice. NFIA shall thereafter supply to the Administrator copies of such pleadings and other documents and related information as the Administrator may from time to time request.

2. *Litigation Initiated by NFIA.* Except in the case of actions for injunctive or similar emergency relief NFIA shall notify the Administrator at least fifteen (15) days in advance of any litigation which NFIA initiates, or which any NFIA member or any NFIA contractor initiates with the knowledge of NFIA, against any party, including the Administrator or any other agency or instrumentality of the Federal government, involving the National Flood Insurance Program. The notice required herein shall include a copy of the proposed complaint and any other initial pleading proposed to be filed. In the case of actions for injunctive or similar emergency relief NFIA shall provide notice and copies of pleadings to the Administrator as soon as reasonably practicable.

B. *Litigation Involving the Administrator*—1. *Litigation Against the Administrator.* If the Administrator is made a defendant in any litigation which involves the National Flood Insurance Program, the Administrator shall immediately notify NFIA of such litigation. Such notice shall be accompanied by a copy of the pleadings filed in that litigation to date of notice. The Administrator shall thereafter supply to NFIA copies of such pleadings and other documents and related information as NFIA may from time to time request.

2. *Litigation Initiated by the Administrator.* Except in the case of actions for injunctive relief or similar emergency relief, the Administrator shall notify NFIA at least fifteen (15) days in advance of any litigation which the Administrator or the Secretary initiates, or which any agency or instrumentality of the Federal government initiates with the knowledge of the Administrator or the Secretary, against any party, including NFIA or its members or contractors, involving the National Flood Insurance Program. The notice required herein shall include a copy of the complaint or other initial pleading intended to be filed. In the case of actions for injunctive or similar emergency relief the Administrator shall provide notice and copies of pleadings to NFIA as soon as reasonably practicable.

C. *Exchange of Views Regarding Litigation.* NFIA and the Administrator shall exchange views regarding legal theories and positions taken in litigation involving the National Flood Insurance Program to which either the Administrator, the Secretary or any agency or instrumentality of the Federal government, or NFIA or any of its members or contractors, is a party. However, no exchange of views is required with respect to any litigation in which NFIA and the Administrator are adverse parties.

D. *Disallowance of NFIA Expenses Incurred to Litigate Claims Against the Administrator.* In the event that NFIA asserts any claim against the Administrator in litigation initiated by NFIA, and such claim is finally decided against NFIA, then NFIA shall reimburse the Administrator, from an assessment of Members, for all expenses, including attorneys fees, incurred by NFIA in preparing for or conducting such litigation to the extent such expenses were paid by NFIA out of policyholder premiums or any other funds held by NFIA under the National Flood Insurance Program.

Article VIII. Contracting by NFIA.

A. *Contracts to Which Applicable.* This Article applies to each contract let by NFIA which involves an aggregate amount or initially estimated aggregate amount in excess of $10,000.

B. *Method of Procurement: Use of Competitive Bidding by Formal Advertisement, Competitive Negotiation, Other Methods.* NFIA and the Administrator intend that the provisions of this Article VIII shall result in substantial competition in the letting of all contracts by NFIA. In letting contracts, NFIA shall use Competitive Negotiation or the other methods of procurement, as follows:

1. *Servicing Company Contracts.* (a) NFIA shall let servicing company contracts in such fashion as is intended to

assure full, open, and free competition among all qualified bidders, by using Competitive Bidding by Formal Advertisement, as provided in paragraph C below, for the letting of all servicing company contracts for States and U.S. Territories having in effect more than 5,000 Flood Insurance Policies at the time procurement is commenced. For a single servicing company contract, NFIA may combine any two or more of States and U.S. Territories.

Exhibit A sets forth the States and U.S. Territories more than 5,000 Flood Insurance Policies in effect as of October 31, 1976.

(b) For States or U.S. Territories having 5,000 or fewer Flood Insurance Policies in effect at the time procurement is commenced, NFIA shall let such contracts by Competitive Bidding by Formal Advertisement unless NFIA determines that, considering the number of policies in force in relation to the geographical area and the number of insurance facilities available in the geographical area, use of Competitive Negotiation is in the best interests of the National Flood Insurance Program, the public and NFIA. Where NFIA lets a contract by use of Competitive Negotiation, NFIA shall include in its Notice under Paragraph G. 1 a statement in writing why such determination was made, and shall follow the procedures set forth in paragraph D below.

(c) NFIA shall utilize the form of servicing company contract annexed hereto as an Exhibit for all servicing company contracts, regardless of the method used for letting such contracts.

(d) NFIA agrees to relet all servicing company contracts on a staggered basis within eighteen (18) months after the effective date of this Agreement.

2. *Insurance Adjustment Organizations.* Unless and until NFIA and the Administrator agree otherwise, (i) NFIA shall utilize the services of qualified insurance adjustment organizations selected by the servicing companies on a rotation basis; (ii) written contracts shall not be required for such services; and (iii) the advance notice provisions of paragraph G below shall not apply. NFIA agrees to conduct a feasibility study to be completed not later than ninety (90) days after the effective date of this Agreement, regarding the possibility of utilizing a method of competitive sealed bidding by formal advertisement or a method of competitive negotiation for the procurement of services of insurance adjustment organizations. NFIA shall promptly advise the Administrator of the results of such study, and, if the Administrator so elects, NFIA and the Administrator shall conduct negotiations for the purpose of considering a change in the method of selecting Insurance Adjustment Organizations.

3. *Insurance Agents, Brokers and Non-Member Insurers.* The parties acknowledge that NFIA does not and need not contract for the services of insurance agents and brokers, and agree that the advance notice provisions of paragraph G below shall not apply to agents and brokers. NFIA agrees that it and its servicing companies shall accept and process any policy application or policy renewal application submitted in proper form by a property insurance agent or broker or non-member insurer qualified to do business in the State in which the property to be insured is located.

4. *Computer System.* (No tentative agreement between the Administrator and NFIA on this point.)

5. *Accountants, Attorneys and Other Professionals.* NFIA shall select accountants, attorneys or other professionals in a manner to assure that, where feasible, at least three qualified interested professionals are thoroughly considered. The provisions of paragraphs G.1 and G.3 below shall not apply to the selection of accountants, attorneys and other professionals.

6. *Services, Supplies and Other Procurement.* (a) The procurement of printing services, photocopying services, furniture, office supplies or other goods and services under a proposed contract or series of related contracts having an aggregate amount or estimated amount in excess of $50,000 shall be by sealed bid invited by ample notice to the public and potential bidders, except where a regulated utility is the only potential supplier as in the case of telephone services, or where there exist only three or fewer potential suppliers, in which case a negotiation procedure may be used which gives each potential supplier thorough consideration and an ample and fair opportunity to compete for award of the contract.

(b) Contracts in an estimated aggregate amount of less than $50,000 may be let by a sealed bid procedure or by a procedure of Competitive Negotiation which is conducted in a manner that thoroughly considers at least three qualified potential suppliers and gives each an ample and fair opportunity to compete for award of the contract.

(c) NFIA shall normally let each contract under this paragraph B.6 to the contractor offering the lowest price; however, where NFIA lets a contract to a contractor other than the contractor offering the lowest price, NFIA shall promptly thereafter prepare a written notice to the Administrator setting forth in full the reasons why NFIA has determined to let the contract to a contractor other than the contractor offering the lowest price.

C. *Servicing Company Contracts: Procedures for Competitive Bidding by Formal Advertisement.* "Competitive Bidding by Formal Advertisement," as used in this Article, shall mean the method of procuring servicing company contracts through solicitation of bids from all qualified potential contractors in the manner calculated to assure full, open and free competition among all qualified bidders, which is set forth in this paragraph C, as follows:

1. NFIA shall advertise for such competitive bids, and advertisements for such competitive bids shall be placed in:

(a) At least one newspaper of general circulation published in each of the following cities: Washington, D.C.; New York, New York; Chicago, Illinois; and San Francisco, California; and

(b) At least two national insurance trade publications such as, but not limited to, The National Underwriter (Property and Casualty Edition), Business Insurance, the U.S. Investor, or The Weekly Underwriter.

2. Every such solicitation for bids shall provide sufficient time for bidding, and in no event less than 15 business days.

3. Every such solicitation for bids shall include a clear statement of work to be performed by the successful bidder.

4. Every such invitation for bids shall specify the time and place for the public opening of bids and shall notify bidders of their right to be present.

5. Provision shall be made for the receipt of bids and for such bids to be maintained, unopened, in a secured, locked bid box.

6. Only bids received prior to the time set for opening set forth in this paragraph C, as follows:

1. NFIA shall advertise for such competitive bids, and advertisements for such competitive bids shall be placed in:

(a) At least one newspaper of general circulation published in each of the following cities: Washington, D.C.; New York, New York; Chicago, Illinois; and San Francisco, California; and

(b) At least two national insurance trade publications such as, but not limited to, The National Underwriter (Property and Casualty Edition), Business Insurance, the U.S. Investor, or The Weekly Underwriter.

2. Every such solicitation for bids shall provide sufficient time for bidding, and in no event less than 15 business days.

3. Every such solicitation for bids shall include a clear statement of work to be performed by the successful bidder.

4. Every such invitation for bids shall specify the time and place for the public opening of bids and shall notify bidders of their right to be present.

5. Provision shall be made for the receipt of bids and for such bids to be maintained, unopened, in a secured, locked bid box.

6. Only bids received prior to the time set for opening shall be considered.

7. Bids shall be opener publicly at the time and place specified in the invitation and shall also be recorded and placed in an appropriate file which shall be available for inspection by interested persons for a period of not less than six months after the award.

8. Except where otherwise provided in the invitation for bids, a bid shall be deemed responsive to the invitation if the bid price is inserted in the space allotted to such purpose and any other requirements of the invitation are met.

9. No bid shall be considered wherein the bidder imposes conditions modifying the requirements of the invitation, or which limits his liability, or which would impose any other condition which would give him an advantage over other bidders. However, NFIA may, with the approval of the Administrator, agree to such modifications of the standard

servicing company contract as may be necessary or appropriate to conclude an agreement in a particular territory.

10. NFIA shall make award of the contract (as soon as practicable after opening of the bids) to the responsible bidder whose bid conforms to all of the essential provisions of the invitation and whose price will be most advantageous. NFIA may reject all bids if it determines that no otherwise responsible bidder has bid an acceptable price.

11. The award shall be made by mailing to the successful bidder a properly executed award document or notice of award. If an advance notice is issued, it shall be followed as soon as possible by a formal award document.

D. *Contracting Through Competitive Negotiation.* In any case where Competitive Negotiation is provided for under the provisions of this Agreement, the following procedures shall be followed:

1. To the fullest extent practicable, Competitive Negotiation shall follow the procedures applicable to formal advertising. At the minimum all solicitations for proposal shall fully describe the criteria which will be utilized for the evaluation of responses.

2. Each solicitation for proposal shall call for a response divided into two separate parts, to wit,

(a) Cost elements, and

(b) All other relevant elements.

3. NFIA shall evaluate such proposals first on the basis of all elements other than cost and shall rank them in the order of acceptability. A proposal is acceptable if it conforms to all the essential requirements of the solicitation for proposal.

4. Only after the foregoing evaluation shall the price be considered by NFIA. Although, in awarding the contract, NFIA shall accord great weight to price, it is recognized that there are cases where price is overbalanced by a proposal which offers the greater value in terms of performance.

5. NFIA shall apply some form of price or cost analysis, where appropriate, in connection with Competitive Negotiation. For such purposes:

(a) Price Analysis is a technique for evaluating prospective price without evaluation of cost as separate elements; for example, comparison of the price quotations submitted; comparison of prior quotations for the same or similar services or items; use of rough yardsticks such as published price lists; comparison of proposed price with estimates independently developed by NFIA personnel.

(b) Cost analysis means the evaluation of separate cost elements of a cost proposal and of the judgmental factors used in projecting the estimated cost from the data including vertification of the cost data, the necessity for certain costs, and the basis for allocation of overhead costs.

7. The justification for the acceptance of any proposed contract price or cost shall be adequately documented and placed in the contract file and shall be available for inspection by any interested person for not less than six months after the award of the contract.

E. If, having fully complied with the provisions of paragraph C above, where applicable, and paragraph D above, where applicable, NFIA has been unable to obtain a contract using such competitive procedures, NFIA may award the contract after negotiations with a sole source or by using competitive bidding by formal advertisement or competitive negotiation or a combination thereof.

F. *Affiliated Adjustment Organizations.* No insurance adjustment organization which is part of or affiliated with or controlled by any NFIA member insurer or any servicing company employee shall be employed to investigate or adjust flood insurance claims except with the approval of the Administrator in connection with a catastrophic event.

G. *Requirements Applicable to All Contracts Let by NFIA.* The following requirements shall apply to all contracts covered by this Article let by NFIA:

1. *Advance Notice.* NFIA shall give Notice to the Administrator before entering into any contract. Such notice shall be given to the Administrator at least thirty (30) days in advance of the commencement of any contractor selection process except that less than thirty (30) days' notice may be given in the case of emergencies and in the normal acquisition of office supplies and equipment in amounts less than $25,000, in which cases such notice shall be given as reasonably expeditiously as possible. The Notice shall include:

(a) A copy of the proposed contract;

(b) A brief description of the supplies or services called for by the contract;

(c) Identification of the method of contractor selection to be used.

2. *Contracts to be in Writing.* All contracts covered by this Article shall be in writing and shall be duly executed by NFIA and by the other contracting party, except as expressly provided herein.

3. *Extensions and Modifications.* In general, new contracts shall be let in accordance with the requirements of this Article, and extensions of existing contracts or modifications of existing contracts shall not be utilized in lieu of letting new contracts. Extensions or modifications of contracts for purposes other than to avoid letting a new contract are permissible, provided that NFIA gives the Administrator 30 days' advance written notice of its intention to execute an extension or amendment to effect a modification.

4. *No Third Party Rights.* The provisions of this Article relating to the selection of servicing companies and other contractors shall not be construed as provisions for the benefit of any potential bidder or contractor or any other person or company not a party to this Agreement, and shall not give rise to any rights on behalf of third parties against NFIA or the Administrator by reason of waiver or violation of such provisions by either party or otherwise.

5. *No Use of Federal Procurement Regulations.* No provision of this Article shall be construed as a reference to or adoption or incorporation of any rule, practice, procedure, term or definition contained in the Federal Procurement Regulations.

6. *Disallowance of Expenses Where Contract is Let in Material Violation of This Article.*

(a) Any expenses incurred pursuant to a contract let by NFIA in material violation of the provisions of this Article, or any expenses incurred to procure goods or services without a contract which should have been procured by contract let in accordance with this Article, shall not be subject to any cost-sharing or other reimbursement by the Federal government unless determined otherwise by the Administrator.

(b) This paragraph G–6 shall apply only to contracts let by NFIA under this Article after the effective date of this Agreement.

(c) This paragraph G–6 shall be subject to the consultation provisions of Article V.A.

H. *NFIA Operational Responsibility.* NFIA shall have the operational responsibility for the letting of contracts as provided in this Article, the day-to-day administration of such contracts; and responsibility over termination of such contracts consistent with the provisions of Article XVI hereof. NFIA's contracting shall be subject to monitoring by the Administrator to assure compliance with the procedures set forth in this Article, and the provisions of Articles X and XII.

Article IX. Computer systems.

A. *General.* This Article applies to all computer systems ("Computer System") which are or may be utilized by NFIA, in carrying out its obligations under this Agreement, in connection with map distribution, flood insurance policy writing, billing and processing, and other services to be provided by NFIA under this Agreement. For purposes of this Article, the term Computer System shall mean all elements (except personnel) used by NFIA for the operations of such system, including: computer programs, operating manuals and instructions, all other documentation developed for or specifically relating to NFIA's information processing, problem logs on operational problems with software or hardware, all NFIA source documents, records, stored data, operational diagnoses or cure of problems or "bugs," all development materials, program listings, historical files, file and table limits, error messages, and other materials relating to retention and storage, data collection and consolidation, validity editing of data, premium payments, calculation of agents' commissions, refunding of policyholder premiums, preparation of agents' checks and statements, accounting for losses, preparation of checks for policyholder refunds and general checks, general ledger accounting, and the furnishing of printed reports, whether on paper, microfilm, magnetic tape, disc, or other medium. The term Computer System shall also be deemed to include any additions, enhancements, improvements or modifications thereto.

B. *Modifications.* Upon consultation as provided in Article V.A., the Adminis-

trator may direct NFIA to modify the Computer System for the purpose of enabling the Administrator to fulfill the Administrator's obligations under this Agreement, the Act or related legislation.

C. *Ownership, Operation, Use, Transfer.* 1. The Computer System shall be owned by both NFIA and the Administrator.

2. The Administrator shall, during normal business hours and without undue interruption of Computer System operations, have access to the Computer System for inspection thereof. Upon request of the Administrator, NFIA shall provide the Administrator a copy of the Computer System or any part thereof. During the term of this Agreement, the Computer System shall be utilized solely for the purposes of the National Flood Insurance Program. NFIA shall at all times during the term of the Agreement adequately store and protect the Computer System.

3. Upon the termination of this Agreement, without payment to the other party or any other restriction, each party hereto may use any part of the Computer System without limitation, whether for such party's own independent use, assignment or transfer to any third party, or other use. Upon termination of this Agreement, NFIA shall provide to the Administrator a copy of the Computer System, in whole or in part, as the Administrator may request.

4. During the term and after termination of this Agreement, without payment to the other party or any other restriction, each party hereto may use, without limitation, any ideas, discoveries, technological inventions or any similar things of value generated or developed through the implementation and use of the Computer System, whether for such party's own independent use, assignment or transfer to any third party, or other use.

D. *Reports.* NFIA shall provide the Administrator from time to time such Computer System reports as the Administrator may reasonably request, and all other reports routinely generated by the Computer System, including copies of any reports received by NFIA upon NFIA's request made to any contractor operating a Computer System under NFIA's direction and control.

Article X. Financial records, audits, and reports.

A. *Records and Audits.* NFIA shall keep and shall by contract require its contractors to keep, such records as may be prescribed by the Administrator in writing to NFIA, including records which fully disclose the total cost of the program undertaken or services being rendered and such other records as will facilitate an effective audit of NFIA's performance under this Agreement. Such records shall include, but are not limited to, flood insurance policy issuance records, books of account, personnel remuneration records and position descriptions, organization structure records, personnel travel approval and standards for reimbursement of employee travel expenses, and open and closed claim files. Such records shall be retained for three years after the final adjustment pertaining to the accounting period covered thereby or such longer time as may be prescribed by the Administrator prior to the expiration of the three-year period. The Secretary, the Administrator, and the Comptroller General of the United States, or any other duly authorized Federal officials shall have access to such records for the purpose of audit and examination at the place where the records are maintained. Nothing in this paragraph shall be construed as a waiver of any attorney-client privilege which NFIA may have in connection with NFIA's written or oral communications with, or documents prepared by, for or at the request of, attorneys employed or retained by NFIA.

B. *Reports of NFIA.* NFIA shall make periodic reports to the Administrator not less often than quarterly indicating (1) the financial condition of the pool, (2) the estimated amount of insurance in force, (3) the status of policyholder premiums collected and the investment income thereon, currently held by NFIA, (4) all distributions of funds to, and financial transactions with, NFIA members, and (5) such other information as the Administrator may reasonably specify.

C. *NFIA Manuals.* NFIA shall include in its manuals for insurance agents, brokers, and adjusters such provisions as may be necessary to facilitate an effective audit of the total cost of the program undertaken and the services being rendered.

Article XI. Promotional material.

A. *Approval by the Administrator.* NFIA shall submit to the Administrator before final printing a draft of each item of promotional material prepared by NFIA. In preparing its final version of such material NFIA shall, subject to the provisions of paragraph C,

1. Take into account all comments made with respect to the material by the Administrator,

2. Comply with all changes of a technical nature made with respect to the material by the Administrator, and

3. Exclude from the material any portion thereof disapproved by the Administrator in writing on the ground that it advocates a political position,

provided that the Administrator's comments, changes, or exclusions are received by NFIA within 15 calendar days after actual receipt of the material by the Administrator for review.

B. *Definition of Promotional Material.* "Promotional materials" is all material, whether in print, on film, slide, or other medium, prepared for wide distribution for the purpose of:

1. Soliciting flood insurance purchases,

2. Educating interested persons, including insurance agents, lending institutions, insurance adjusters or companies, with respect to their participation in the National Flood Insurance Program, or

3. Providing general informational material to members of the public about the National Flood Insurance Program or its history.

Promotional material does not include any form of communication solely with members of NFIA.

C. *Limitations.* Nothing in paragraph A shall:

1. Prevent NFIA from printing and distributing in its own name or in the name(s) of one or more of its members any material, whether of a political nature or otherwise, provided that the expense of printing and distributing the material is not paid out of policyholder premiums and is not subject to the cost-sharing provisions of Article IV of this Agreement;

2. Be construed as a waiver by NFIA or any of its members of the right to free expression guaranteed under the First Amendment of the Constitution of the United States.

Article XII. Equal opportunity. During the performance of this contract, NFIA agrees as follows:

A. NFIA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. NFIA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. NFIA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator setting forth the provisions of this Equal Opportunity clause.

B. NFIA will, in all solicitations or advertisements for employees placed by or on behalf of NFIA, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. NFIA will send to each labor union or representative of workers with which NFIA has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Administrator, advising the labor union or workers' representative of NFIA's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. NFIA will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. NFIA will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for

purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of NFIA's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and NFIA may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

G. NFIA will include the provisions of paragraphs (a) through (g) in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, substituting the word "Contractor" for the word "NFIA" in each such provision so that such provisions will be binding upon each contractor or vendor. NFIA will take such action with respect to any contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event NFIA becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the contracting agency, NFIA may request the United States to enter into such litigation to protect the interests of the United States.

H. *Civil Rights Act of 1964.* NFIA acknowledges that this Agreement and all flood insurance provided hereunder is subject to the provisions of Title VI of the Civil Rights Act of 1964 and to the applicable Federal regulations issued and requirements established pursuant thereto, and agrees that NFIA shall not exclude any person or organization from participation in the program authorized by the Act or otherwise subject any person or organization to discrimination under the program, on the basis of sex, shall refer to the Administrator for aprace, color, or national origin. NFIA propriate action any complaint or information concerning the existence of any such unlawful discrimination in any manner within the purview of this Agreement.

Article XIII. Construction. This Agreement shall be construed, interpreted, and the rights of the parties determined, in accordance with the law of contracts of the District of Columbia.

Article XIV. Amendments. This Agreement, including exhibits hereto, sets forth the entire understanding and agreement of the parties. All amendments hereto or modifications hereof, to be binding on the parties, must be in writing duly executed by both parties.

Article XV. Term. This Agreement shall become effective as of and shall remain in effect for a minimum of one full accounting period thereafter, and, unless terminated as provided in Article XVI shall be considered to have been renewed annually thereafter as of the first day of the succeeding accounting period.

Article XVI. Termination and transfer.

A. *Termination at End of Accounting Period.* Unless earlier terminated by expiration of its authorization under the Act, this Agreement may be terminated by either party by giving written notice to the other on or before the last day of the seventh month of any accounting period. Such termination shall not become effective until the end of the accounting period during which written termination notice is given.

B. *Termination by Conversion to Part B of the Act.* This Agreement may be terminated by either party at any time concurrently with the implementation of Part B of Chapter II of the Act.

C. *Termination for Material Breach.* Either party may terminate this Agreement upon the commission of a material breach thereof by the other party, provided that, prior to such termination, the party asserting a material breach must give written notice of such assertion to the other party, and give such other party a reasonable time, not less than 30 days, to cure such asserted breach. The consultation provisions of Article V shall apply in connection with all such assertions of material breach. Upon termination of this Agreement by either party under this Paragraph C, the other party shall retain all rights at law or in equity to seek damages or other relief against the first party for an unjustified termination or otherwise. The termination date for a termination under this Paragraph C must be specified in the notice of asserted breach, and shall not be less than 30 days or more than 90 days after the date of such notice.

D. *Transfer Upon Termination.* Effective upon the termination date of this Agreement under any provision of this Article XVI:

1. *Policies.* NFIA will assign and the Administrator will assume, all of NFIA's rights and obligations pursuant to or in connection with all policies of flood insurance issued by NFIA at any time under the program.

2. *Computer Systems.* NFIA will assign, and the Administrator will assume, all of NFIA's right, title and interest in, and obligations under leases and contracts for, any computer mainframe, data entry equipment, microfilm equipment or other Computer System equipment.

3. *Policy and Claims Files.* NFIA shall deliver to the Administrator all policy and claims files in NFIA's possession in the form maintained by NFIA; provided, however, that the Administrator shall grant NFIA continued access to such files during normal business hours for the purpose of preparing or defending any claim or litigation.

4. *Other Program Materials.* NFIA shall transfer to the Administrator all promotional materials, flood insurance manuals, and similar materials disseminated to agents, servicing companies, independent adjustment organizations and the general public; provided, however, that NFIA shall be entitled to retain a reasonable number of copies of such materials for its own records and for such future use, without limitation, as NFIA or any of its members may determine.

5. *Leases and Other Contracts.* NFIA will assign, and the Administrator will assume, all of NFIA's rights and obligations arising out of or under any lease for real or personal property or any contract for services or supplies relating to NFIA's performance under this Agreement. The Administrator acknowledges, however, that servicing companies, under the standard servicing agreement attached hereto as Exhibit may terminate such contract as provided therein.

E. *Cooperation During Transition.* In the event of a termination under this Article, the parties agree to cooperate with each other to effect orderly transfers as contemplated by Paragraph D above. During the transition period between the date of any notice of termination and the termination date NFIA shall provide all reasonable assistance to the Administrator in connection with the transfer of the Computer System to permit the Administrator to assume operational responsibility therefor without undue interruption of computer services.

Article XVII. Attendance at program meetings. On reasonable notice from the Administrator or FIA's flood insurance specialists NFIA shall participate, and cause its servicing companies to participate, at community and other program meetings convened by the Administrator and/or FIAs flood insurance specialists. NFIA shall notify the Administrator of, and invite his representative to attend, public meetings held by NFIA, including but not limited to seminars and briefings for insurance agents, brokers, adjustment organizations, and servicing companies. The Administrator shall notify NFIA of, and invite NFIA's representatives to attend, all public meetings of any nature convened by the Administrator or his designate relating to the National Flood Insurance Program.

Article XVIII. Toll free telephones. NFIA shall require in servicing company contracts for those jurisdictions set forth in Exhibit C that the servicing company install, staff and maintain a toll free telephone for each servicing territory for the benefit and use of the general public during normal business hours. For all other servicing territories NFIA shall install a single centralized toll free telephone for the same purposes and times. During evenings, weekends, and legal holidays, such lines may be operated by means of a message recording service. NFIA or its servicing company shall respond to recorded messages no later than the close of business on the next business day following receipt of the message.

Article XIX. Notice to policyholders. NFIA shall provide a notice at the time each flood insurance policy is issued or renewed that advises the policyholder of

(1) the availability of the toll free telephone services provided in Article XVIII, (2) the name of the appropriate servicing company, (3) the address of the Administrator, (4) the Administrator's toll free telephone service, and (5) the Administrator's invitation to submit inquiries, complaints, or suggestions relating to the National Flood Insurance Program.

Article XX. Assignment, notices and time periods.

A. The terms of this Agreement shall extend to the benefit of, and be binding upon, the Secretary, the Administrator, and NFIA and their successors and assigns. This Agreement shall not be assigned by NFIA without the express written consent of the Administrator.

B. Any notice required to be given or made hereunder shall be deemed properly given if personally delivered or mailed, postage prepaid, return receipt requested, to the address specified below:

If to NFIA:

Chairman, Executive Committee, NFIA, 1755 S. Jefferson Davis Highway, Arlington, Virginia 22202.

If to the Administrator:

Federal Insurance Administrator, 451 Seventh Street, Washington, D.C. 20410.

C. Time periods specified in this Agreement shall, unless otherwise specified, be calculated in calendar days, and shall be calculated by including the day on which an event occurs which causes the commencement of the time period.

EXHIBIT A

States with 5,000 or More Policies as of October 31, 1976:

1. Florida
2. Louisiana
3. Texas
4. New Jersey
5. California
6. Pennsylvania
7. New York
8. Mississippi
9. Illinois
10. Virginia
11. Arizona
12. North Carolina
13. South Carolina
14. Michigan
15. Massachusetts
16. Puerto Rico
17. Maryland
18. Ohio
19. Missouri
20. Connecticut
21. Oklahoma
22. Alabama
23. Washington
24. North Dakota
25. Georgia
26. Rhode Island
27. Kentucky

EXHIBIT B

FORM OF PREAMBLE TO FEDERAL REGISTER PUBLICATION OF CLARIFICATION

This Notice is published for the purpose of clarifying provisions in the Standard Flood Insurance Policy under the National Flood Insurance Program which relate to [state subject matter of Clarification]. In adjusting and settling claims under the Standard Flood Insurance Policy, a question has arisen as to whether these provisions permit [state issue involved in Clarification]. The Administrator had determined that [ ].

The Administrator has proposed to the National Flood Insurers Association that the Administrator's position on this matter be issued as a formal Interpretation of the Standard Flood Insurance Policy. The National Flood Insurers Association, however, has advised the Administrator that insurance policies which are not related to the National Flood Insurance Program contain provisions identical or similar to those provisions of the Standard Flood Insurance Policy which are the subject of this Notice. The National Flood Insurers Association has therefore requested that in order to avoid unintended complications in the interpretation of such unrelated policies, the language of the Standard Flood Insurance Policy be revised in order to clarify the intent of the Standard Flood Insurance Policy. The Standand Flood Insurance Policy is therefore revised as set forth below.

The Clarification indicated above does not effect a change in existing coverage under the Standard Flood Insurance Policy, but reflects the Administrator's interpretation of coverage under that Policy as it presently exists. Accordingly, in adjusting and settling claims under the Standard Flood Insurance Policy, the National Flood Insurers Association has agreed to implement the above Clarification by [description of implementation].

EXHIBIT C

SERVICING COMPANIES GETTING TOLL FREE LINES

Servicing company	*Territory*
Travelers Insurance[1]	Florida
Aetna Technical Service	Louisiana
St. Paul Fire & Marine	Texas
Great American	New Jersey, New York
Fireman's Fund	California
General Accident	Pennsylvania, Delaware
Travelers Insurance	Mississippi
State Farm	Illinois
I.N.A	Virginia, District of Columbia
Aetna Technical Services	Arizona
Kemper Insurance	North Carolina
I.N.A	Michigan
Hartford Insurance	Alabama, Georgia
Maryland Casualty	South Carolina
U.S.F. & G. Co.[1]	Maryland
Commercial Union[1]	Maine

[1] Company had toll-free line installed in July, 1976 as part of NFIA feasibility study.

[FR Doc.77-2516 Filed 1-25-77;3:41 pm]

federal register

FRIDAY, JANUARY 28, 1977

PART VI

DEPARTMENT OF COMMERCE

Patent and Trademark Office

■

PATENT CASES

Examining and Appeal Procedures

Title 37—Patents, Trademarks and Copyrights

CHAPTER 1—PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE

PART 1—RULES OF PRACTICE IN PATENT CASES

Patent Examining and Appeal Procedures

On October 4, 1976 notice was given in the FEDERAL REGISTER (41 FR 43729) of a proposal to amend sixteen sections of Title 37 of the Code of Federal Regulations relating to patent examining and appeal procedures. Interested persons were invited to comment on the proposal by December 7, 1976. One hundred seventy-five written letters and statements were submitted. A hearing was held in Arlington, Virginia on December 7, 1976 at which 21 persons testified orally. Careful consideration has been given to all comments received, and the proposal is being adopted with certain changes.

The regulations adopted involve all sections that were proposed to be revised, amended or added—namely, §§ 1.11, 1.14, 1.52, 1.56, 1.65, 1.69, 1.97, 1.98, 1.99, 1.109, 1.175, 1.194, 1.196, 1.291, 1.292, and 1.346. Amendments also are being made in two sections which were not included in the published proposal—§§ 1.51 and 1.176. Since amendments to these sections are closely related to the substance of matters which were contained in the published proposal, separate notice and public comment on these amendments are deemed unnecessary.

In addition, amendments are being adopted which were published for comment in two earlier, much less extensive proposals that concerned availability of certain files for public inspection. A notice of a proposed amendment to § 1.14(b) was published on June 4, 1974 (39 FR 19786). A notice of a proposed amendment to § 1.11(a) was published on September 17, 1974 (39 FR 33376). No negative comments were submitted with respect to either of these proposals and both are being adopted without change.

The text of the rules will be reproduced in the Patent and Trademark Office Official Gazette in about a month with additions indicated by arrows and deletions indicated by brackets to help readers identify the changes. A transcript of the hearing, the letters and written statements received, and a summary and analysis of the comments are available for public inspection in Room 11E10 of Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

PURPOSE OF RULES

The purpose of the rules that are being adopted is to improve the quality and reliability of issued patents by strengthening patent examining and appeal procedures. It is desirable that patents be as dependable as possible, so as to enhance the incentives provided by the patent system to make inventions, to invest in research and development, to put new or improved products on the market, and to disclose inventions that otherwise would be kept as trade secrets. It is believed that the rules being adopted will help to maintain strong patent incentives.

The rules afford patent owners an opportunity, through the filing of a reissue application, to obtain a ruling from an examiner on the pertinence of additional prior art after a patent has been issued. The rules also broaden the public's opportunity for participation in the patent examining process, consistent with the limitations of statute, the protection of trade secrets, and the need to avoid making it unduly expensive to obtain a patent.

The rules set forth the duty of candor and good faith which applicants have to the Patent and Trademark Office and encourage them to provide information about the prior art in a way that will make it more useful to examiners. A provision for foreign language oaths by individuals who do not understand English is intended to make them more aware of their representations and of their obligations.

Under the rules more Patent and Trademark Office decisions that could have important precedent value will be available to the public, and some additional files will be available for inspection. Proceedings before the Board of Appeals are modified to help avoid the issuance of invalid patents. The rules encourage examiners to see that persons inspecting the file history of issued patents will be able to tell why the case was allowed.

REISSUE APPLICATIONS

Amended § 1.175 permits a patent owner to have new prior art considered by the Office by way of a reissue application without making any changes in the claims or specification. It is adopted with no change from the proposal. The requirement for an oath or declaration alleging that the reissue applicant believes "the original patent to be wholly or partly inoperative or invalid. . . ." is dispensed with in § 1.175(a)(1) unless the applicant believes that to be the case. Section 1.175(a)(4) recognizes that reissues may be filed to have the patentability of the original patent considered in view of prior art or other information relevant to patentability which was not previously considered by the Office.

Thus, a patentee may file a reissue if he believes his patent is valid over prior art not previously considered by the Office but would like to have a reexamination. The procedure may be used at any time during the life of a patent. During litigation, a federal court may, if it chooses, stay proceedings to permit new art to be considered by the Office.

If a reissue application is filed as a result of new prior art with no changes in the claims or specification and the examiner finds the claims patentable over the new art, the application will be rejected as lacking statutory basis for a reissue, since 35 USC 251 does not authorize reissue of a patent unless it is deemed wholly or partly inoperative or invalid. However, the record of prosecution of the reissue will indicate that the prior art has been considered by the examiner.

A substantial majority of the comments received favored amended § 1.175 as a means for improving the reliability of patents and avoiding unnecessary litigation costs. The negative comments generally questioned the statutory authority of the Commissioner to adopt this section. Authority for § 1.175 is believed to exist in 35 U.S.C. 6, which is the Commissioner's rulemaking authority, and in 35 U.S.C. 251. The latter section of the statute requires that the patent be deemed wholly or partly inoperative or invalid before a reissue may be granted, but does not require such a belief by the patentee before a reissue application may be filed. The case law does not suggest that the approach of new § 1.175(a)(4) is inconsistent with 35 U.S.C. 251.[1] Inasmuch as 35 U.S.C. 251 is a remedial provision,[2] it is believed that a liberal interpretation is justified and that adequate authority exists for the amended section.

Amended § 1.11(b) opens all reissue applications to inspection by the general public. Section 1.11(b) also provides for announcement of the filings of reissue applications in the Official Gazette. This announcement will give interested members of the public an opportunity to submit to the examiner information pertinent to patentability of the reissue application. The announcement will include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned. Section 1.11(b) is amended from the proposal to so indicate. Reissue applications already on file on the effective date of the section will not be automatically open to inspection and will not be announced in the Official Gazette. However, a liberal policy will be followed in granting petitions for access to individual applications already on file.

In order that members of the public may have time to review the reissue application and submit pertinent information to the Office before the examiner's action, § 1.176 is amended to provide that reissue applications will not be acted on sooner than two months after the Official Gazette announcement of filing.

A substantial majority of the comments received favored adoption of § 1.11(b). The only opposition was based upon a suggestion that no statutory authority exists. However, since reissue applications contain no new disclosure, and therefore no trade secrets or confidential information, they are considered to present a "special circumstance" within the meaning of 35 U.S.C. 122.

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[1] See *In re Clark*, 522 F.2d 623, 187 USPQ 209 (CCPA 1975), at footnote 4 where the court declined to decide whether it is proper to seek reissue merely to disclose uncited prior art. See also *In re Altenpohl*, 500 F.2d 1151, 183 USPQ 38 (CCPA 1974).

[2] See *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971).

The insertion of "all" as the fifth word of the first sentence of § 1.11(b) is for clarity. The word "furnished" is changed to "obtained" in § 1.11 for clarity.

PROTESTS AND PUBLIC USE PROCEEDINGS

Amended §§ 1.291 and 1.292 give greater recognition to the value of written protests and public use petitions in avoiding the issuance of invalid patents.

A substantial majority of the comments favored these sections and viewed them as improving the quality of issued patents. Entry of protests has been upheld in court.[3]

Section 1.291(a) provides that public protests against pending applications will be entered in the application file and will, if they meet stated requirements, be considered by the examiner. To guarantee consideration by the examiner, protests must be accompanied by copies of prior art documents relied upon, although protests without copies will not necessarily be ignored. This is similar to the requirement of new § 1.98 that copies of patents and publications accompany prior art statements. Section 1.291 does not contemplate permitting a protester to participate as a party in further proceedings. In the case of applications available to the public, such as reissue applications, the protester may file papers rebutting statements made by the applicant. The examiner at his discretion may request a protester to submit additional written information or may provide extra time for comments by a protester to be filed.

To ensure consideration by the examiner, all protests must be timely submitted. Protests will generally be considered timely submitted if they are filed before final rejection or allowance of the application by the examiner. The consideration given to protests filed after final rejection or allowance of the application by the examiner will depend upon the relevance of the prior art documents submitted and the point in time at which they are submitted. Obviously, if the prior art documents anticipate or clearly render obvious one or more claims they will not knowingly be ignored. It must be recognized, however, that the likelihood of consideration by the examiner decreases as the patent date approaches. Accordingly, protests must be filed early in order to ensure their consideration.

The first sentence of § 1.291(a) is deleted as unnecessary. Section 1.291(a) also is changed from the proposal to make clear that it applies to pending applications and that all protests will be referred to the examiner having charge of the subject matter involved.

Section 1.291(b) incorporates the existing Office policy of permitting persons to submit prior art citations or copies of prior art after a patent has been granted. The section is changed from the proposal by the addition of the words "any papers related thereto" to recognize that statements as to the pertinence of prior art may be submitted. Both the citations and the related papers are to be entered without comments. The material submitted is not examined by the Office but is available to members of the public inspecting Office records.

Some suggestions were received for major modifications of § 1.291. It was suggested that an advisory opinion of the examiner be placed in the patent file when protests were received after issuance of the patent. Several persons supported a suggestion for examiners to state whether a "new issue" was raised by prior art cited by a protester. Another suggestion was that a procedure similar to that used in the recent Trial Voluntary Protest Programs[4] be adopted on a continuing basis. These suggestions were carefully considered, but are not adopted. The suggestions extend substantially beyond § 1.291 as proposed, and their benefits do not appear sufficient to justify the added cost at this time.

Materials submitted to the Office under §§ 1.291 and 1.292 are to be served upon the applicant, patentee, attorney or agent when possible. The term "patentee" is used in its ordinary sense as defined in 35 USC 100(d). If service is not possible, materials are to be submitted in duplicate so that the Office can attempt to send the duplicate copy. The proposal is changed by adding the words "with the Office" after "filed" in §§ 1.291(c) and 1.292(b) for clarity.

In § 1.292, the requirement that petitioner bear the Office's expenses in conducting the public use proceeding is deleted. Section 1.292 is also amended to ensure that the existence of public use proceedings is recorded in the application file wrapper. Notice of a petition for a public use proceeding will be entered in the file in lieu of the petition itself when the petition and the accompanying papers are too bulky to accompany the file. Any public use papers not physically entered in the file will be publicly available whenever the application file wrapper is available.

DUTY OF DISCLOSURE

Amended § 1.56 defines the duty to disclose information to the Office and the criteria for striking an application when that duty is violated. The wording of the section is changed in several respects from the proposal, but the purpose and general scope are the same as in the proposal. The section codifies the existing Office policy on fraud and inequitable conduct, which is believed consistent with the prevailing case law in the federal courts. The expanded wording of the section is intended to be helpful to individuals who are not expert in the judicially developed doctrines concerning fraud. The section should have a stabilizing effect on future decisions in the Office and may afford guidance to courts as well.

A majority of comments received favored § 1.56 as proposed or with modifications. Persons opposed expressed concern over the imprecise definition of the duty of disclosure and the possibility that the proposal would substantially increase the burden on patent applicants. Some stated that there would be increased litigation as a result of the proposal. Several suggestions were received on better ways to define the individuals who should disclose information and the kinds of information that should be disclosed.

The first sentence of § 1.56(a) is changed from the proposal by adding the word "substantively," so that individuals having a duty of disclosure are limited to those who are "substantively involved in the preparation or prosecution of the application." This change is intended to make clear that the duty does not extend to typists, clerks, and similar personnel who assist with an application. This phrase, when taken with the last sentence of § 1.56(a), is believed to provide an adequate indication of the individuals who are covered by the duty of disclosure. The word "with" is inserted in the first sentence of § 1.56(a) before "the assignee" and before "anyone to whom there is an obligation to assign" to make clearer that the duty applies only to individuals, not to organizations.

Numerous comments concerned the term "relevance" that was used in the proposal. In response to the comments, language is substituted in § 1.56 and related sections which is believed to establish a clearer standard for determining whether information need be disclosed to the Office. "Relevant" is replaced by "material" because the latter term connotes something more than a trivial relationship. It appears to be more commonly used in court opinions. In addition, the third sentence of § 1.56, which defines materiality, is rewritten. The sentence now states that information is material "where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent." The sentence paraphrases the definition of materiality used by the Supreme Court in its recent decision in *TSC Industries* v. *Northway*.[5] Although in that case the court was concerned with rules promulgated by the Securities and Exchange Commission, the Court's articulation of materiality is believed consistent with the prevailing concept that has been applied by lower courts in recent patent cases.

The definition of materiality in § 1.56 will have to be interpreted in the context of patent law rather than securities law. Principles followed by courts in securities cases should not be translated to patent cases automatically. It is noteworthy, however, that in formulating the definition of materiality in *TSC Industries* the Supreme Court considered some of the same matters over which concern was expressed in the public

[3] *International Paper Co.* v. *Fibreboard Corp.*, 63 F.R.D. 88, 181 USPQ 740 (D. Del. 1974).

[4] 923 O.G. 2; 930 O.G. 1454; 936 O.G. 945

[5] 426 U.S. ——, 48 L. Ed. 2d 757, 96 S. Ct. 2126, 44 U.S.L.W. 4852, decided June 14, 1976.

comments on proposed § 1.56. The Court noted that the standard of materiality should not be so low that persons would be "subjected to liability for insignificant omissions or misstatements," or so low that the fear of liability would cause management "simply to bury the shareholder in an avalanche of trivial information—a result that is hardly conducive to informed decision making."[6]

Although the third sentence of § 1.56 (a) refers to decisions of an examiner, it is intended that the duty of disclosure would apply in the same manner in the less common instances where the official making a decision on a patent application is someone other than an examiner—e.g., a member of the Board of Patent Interferences or the Board of Appeals. This is implicit in the duty "of candor and good faith" toward the Office that is specified in the first sentence of § 1.56(a).

Comments and questions were received concerning the term "information" used in the second and third sentences of § 1.56(a) and elsewhere. It means all of the kinds of information required to be disclosed under current case law. In addition to prior art patents and publications, it includes information on prior public uses, sales, and the like. It is not believed practicable to define information in the text of the rule at this time. However, the rule is not intended to require disclosure of information favorable to patentability—e.g., evidence of commercial success of the invention. Neither is it meant to require disclosure of information concerning the level of skill in the art for purposes of determining obviousness.

Several comments were received concerning the duty to disclose information the patent applicant regards as confidential, including information the applicant has received from another party under an injunction of secrecy. This problem has existed prior to amendment of § 1.56. The Patent and Trademark Office, of course, keeps information disclosed by applicants confidential until a patent is issued. It has been suggested that the Office should develop a mechanism for continuing to hold information in confidence after issuance of a patent if in the judgment of the examiner the information is not material to the examination of the application. The feasibility of offering a rule for public comment on this topic at a later date will be considered.

New § 1.56(b) is added to make clear that information may be disclosed to the Office through an attorney or agent of record or through a pro se inventor, and that other individuals may satisfy their duty of disclosure to the Office by disclosing information to such an attorney, agent or inventor. Information that is not material need not be passed along to the Office.

Proposed sections 1.56 (b) and (c) have been revised and shortened and appear at §§ 1.56 (c) and (d). The proposal was criticized for leaving it open to the Office to apply a different standard of materiality from the one set forth in § 1.56.[7] Section 1.56(d) as adopted states that an application "shall" be stricken when the criteria set forth are met. Thus § 1.56(d) as adopted establishes a single standard for striking applications.

The term "inequitable conduct" is dropped from § 1.56(d) as covering too great a spectrum of conduct to be subject to mandatory striking. Inequitable conduct that is equivalent to fraud is intended to come within the definition of fraud. The Court of Customs and Patent Appeals already has interpreted "fraud" in existing § 1.56 to encompass conduct of this sort.[8] Moreover, § 1.56(d) as adopted calls for striking an application either for fraud or for a violation of the duty of disclosure.

In § 1.56(d) "bad faith" is substituted for the term "deliberate" that was used in the proposal. This change is to make clear that an intent to deceive (or gross negligence equivalent to such an intent) must be shown before an application will be stricken. Bad faith is not present if information is withheld as a result of an error in judgment or inadvertence.

Several comments concerned whether attorneys and agents could represent their clients' interests and at the same time comply with § 1.56. Similar comments were directed to §§ 1.97 to 1.99. It is of course in the interest of the client to have a valid patent and this cannot be obtained without disclosure of known material facts. It is not inconsistent for an attorney or agent to fulfill his duty of candor and good faith to the Office and to act as an advocate for his client. The submission of information under § 1.56 does not preclude the submission of arguments that such information does not render the subject matter of the application unpatentable.

In § 1.65 a new third sentence is added to require the patent applicant to acknowledge the duty of disclosure. The language is changed from the proposal to be consistent with changes made in § 1.56. To allow time for the Office and applicants to revise printed oath and declaration forms now in use, the mandatory acknowledgement of the duty of disclosure in amended § 1.65 does not become effective until January 1, 1978. Applicants at their option may include the new language in oaths and declarations filed prior to the effective date. The Office will publish a separate notice in the FEDERAL REGISTER adding a sentence acknowledging the duty of disclosure to appropriate forms in 37 CFR Part 3, "Forms for Patent Cases."

The word "statement" is deleted from the title of § 1.65 to avoid confusion with the prior art statement of §§ 1.97 through 1.99.

Amended § 1.346 emphasizes that there must be a reasonable basis to support every allegation of improper conduct made by a registered practitioner in any Office proceeding. The language that was proposed is clarified in the section as adopted. Although § 1.346 is limited to papers filed in Office proceedings, the amendment to § 1.346 is not intended to imply that disciplinary action never will be taken against a registered practitioner under § 1.348 for a groundless allegation of improper conduct in a court proceeding.

PRIOR ART STATEMENTS

New §§ 1.97, 1.98 and 1.99 deal with prior art statements and provide a mechanism by which patent applicants may comply with the duty of disclosure provided in § 1.56. The sections have been substantially changed from the proposal, in response to comments received.

Unlike the corresponding part of the proposal, the sections as adopted are not mandatory, though applicants are strongly encouraged to follow the procedures described in them. Applications will be examined whether or not a prior art statement is filed and whether it complies with the rules or is defective. It is nevertheless believed that applicants will find that the use of prior art statements complying fully with the requirements of §§ 1.97 through 1.99 will be the best way to satisfy the duty of disclosure. The Patent and Trademark Office cannot assure that prior art disclosed in other ways will be considered by the examiner.

Sections 1.97 through 1.99 do not prescribe the content of what materials should be submitted in the prior art statement; this is for the applicant and the attorney or agent to decide in the light of the duty of disclosure expressed in § 1.56. The only criterion contained in §§ 1.97 through 1.99 as to content of the art cited is in § 1.97(b). This subsection indicates that the statement will be construed as a representation that the prior art listed includes what the submitter considers to be the closest art of which he is aware. The submitter need not decide which particular items of prior art are the closest or identify any items as such; the representation is simply that he is not withholding known prior art which he considers closer than that which is submitted. Section 1.97(b) makes clear that the prior art statement is not a representation that a search has been made or that no better art exists

In § 1.97(a) the time for filing the prior art statement is extended from the two months of the original proposal to three months. In most cases prior art submitted within three months will be available to the examiner before he takes up the case for action, though it will be helpful if citations are made as promptly as possible.

Section 1.98 lists the elements of the prior art statement: a listing of the art, a concise explanation of the relevance of each listed item, and copies of the art or the pertinent portions thereof.

The prior art statement resembles somewhat the "patentability statement"

[6] 426 U.S. at ——, 48 L. Ed. 2d at 765, 96 S. Ct. at 2132, 44 U.S.L.W. at 4855.

[7] See discussion accompanying proposed rules in FEDERAL REGISTER of October 4, 1976, page 43731, first sentence.

[8] *Norton v. Curtiss*, 433 F. 2d 779, 792, 167 USPQ 532, 543 (CCPA 1970).

of the proposal and the "patentability brief" proposed elsewhere.[9] The name has been changed to reflect a change in the requirements of § 1.98(a). Unlike the proposed version of this paragraph, which called for an explanation of why the claimed invention is believed patentable over the cited art, the paragraph as adopted calls only for a concise explanation of the relevance of each listed item. This may be nothing more than identification of the particular figure or paragraph of the patent or publication which has some relation to the claimed invention. It might be a simple statement pointing to similarities between the item of prior art and the claimed invention. It is permissible but not necessary to discuss differences between the prior art and the claims. It is thought that the explanation of relevance will be essentially as useful to the examiner as the formerly proposed explanation of patentability, and should be significantly less burdensome for the applicant to prepare.

Section 1.98 requires a copy of each patent or publication cited, including U.S. patents, to accompany the prior art statement. Several comments questioned the need for burdening the applicant to supply copies of materials that are present in the Office's files. However, substantial time and effort often is needed to locate a document in the Office's files. Since the person submitting the prior art statement generally has available a copy of the item being cited, it is believed that expense and effort can be minimized by having that person supply the copy in all cases. Consideration has been given to proposals to allow the applicant to submit an order for copies of the patents along with his statement instead of actually submitting copies. This will be further studied, but to date no way has been found to assure that the copies will be available to the examiner by the first action unless the applicant submits them with the prior art statement.

Other changes to §§ 1.97 through 1.99 from the proposal eliminate unnecessary language and clarify the requirements.

A notice published in 1974[10] contained guidelines for the citation of prior art by applicants. Many of those guidelines are repeated or superseded by §§ 1.97 through 1.99. In order to allow applicants, attorneys and agents time to adjust their procedures to comply with the requirements for prior art statements, the effective date of §§ 1.97 through 1.99 will be July 1, 1977. Until these new sections become effective, applicants should continue to follow the 1974 guidelines. Issuance of a revised notice, to take effect July 1, 1977, is under study.

A survey conducted by the Office in 1976 concludes that many applicants have not been citing prior art to the Office.[11] It is hoped that with the duty of disclosure expressly set forth in § 1.56, applicants will perceive that it is to their advantage to use the procedures of §§ 1.97 through 1.99.

Section 1.51 is amended by designating the existing rule as § 1.51(a) and adding new § 1.51(b) which contains a reference to §§ 1.97 through 1.99.

Foreign Language Oaths

Amended § 1.52 and new § 1.69 are adopted as proposed.

Section 1.69 requires that oaths and declarations be in a language which is understood by the individual making the oath or declaration, i.e., a language which the individual comprehends. If the individual comprehends the English language, he must use it. If the individual cannot comprehend the English language, any oath or declaration must be in a language which the individual can comprehend. If an individual uses a language other than English for an oath or declaration, the oath or declaration must include a statement that the individual understands the content of any documents to which the oath or declaration relates. If the documents are in a language the individual cannot comprehend, the documents may be explained to him so that he is able to understand them.

The Office will provide approved translations for as many of the oath or declaration forms which appear in Part 3 of Title 37 of the Code of Federal Regulations as practicable, and in as many languages as practicable, probably using a side-by-side English/foreign language format. The availability of the foreign language forms will be announced in the Official Gazette at a later date.

The change in § 1.52, providing for an exception to the requirement that oaths and declarations be in the English language, is necessitated by the adoption of § 1.69.

Although very few persons opposed §§ 1.52 and 1.69, several suggested that the philosophy behind the change be extended to the specification, requiring the specification to be in a language which the applicant understands, accompanied by an English translation. This suggestion was not considered feasible because of the obvious burdens on the applicant and the danger to the applicant and the public if the translation is not literally correct. Also, if a large number of applications were filed in a foreign language, there would be significant administrative burdens on the Office. Attention is directed to the Manual of Patent Examining Procedure, § 608.1, which permits non-English language applications to be filed in certain limited circumstances.

Other suggested modifications of the proposed rule included: (1) using an English language oath or declaration with one additional clause in a language understood by the person making the oath or declaration, the clause stating that the person understands all the documents to which the oath or declaration relates; and (2) extending the two month grace period for filing an English translation of an oath or declaration filed under § 1.65.

After due consideration, suggestion (1) was believed not to accomplish the objectives of the rule as well as the adopted rule. Suggestion (2) would cause unsatisfactory delays in the initial processing of applications.

Decisions and Files Made Public

Section 1.14(d) makes more explicit the conditions under which significant decisions of the Patent and Trademark Office will be made available to the public, and includes reference to decisions of the Board of Patent Interferences, in addition to decisions of the Board of Appeals and the Commissioner.

A large majority of the comments received were favorable. Several commentators felt that more decisions would be made available as a result of the proposed section and that it would assist in publicizing aspects of Office procedure which may not have been available previously.

Some negative comments were based on the view that the Freedom of Information Act[12] required all decisions of the Office to be made publicly available. A greater number of those opposing the proposed section, however, felt that applicants should have an absolute right to have their applications maintained in confidence and that no information should be made public without specific authorization from them. One commentator felt that rulemaking on this subject should be deferred until currently pending litigation[13] under the Freedom of Information Act was finally resolved.

The section as adopted is applicable to decisions deemed by the Commissioner to involve an interpretation of patent laws or regulations that would be of significant precedent value, where such decisions are contained in either pending or abandoned applications or in interference files not otherwise open to the public. It is applicable whether or not the decision is a final decision of the Patent and Trademark Office.

The parenthetical phrase in the first sentence of the proposed section, which cited other provisions of the rules under which decisions are open to public inspection, is deleted as unnecessary and possibly confusing. Also, in view of several comments received, the period of time during which an applicant or party in interest may object to having a decision made public is extended from one month to two months. At least twenty days is given to request reconsideration and seek court review before a decision is made public over an objection.

Section 1.14(d) is considered to place a duty on the Patent and Trademark Office to identify significant decisions and to take the steps necessary to inform the public of such decisions, by publication of such decisions, in whole or in part. It is anticipated, however, that no more than a few dozen decisions per year will be deemed of sufficient importance to warrant publication under the authority of this section.

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[9] E.g., Federal Register of September 9, 1968, 34 FR 14176, 866 O.G. 1402; S. 2255, 94th Congress, § 131(b).

[10] Notice of August 12, 1974, 926 O.G. 2.

[11] BNA's Patent, Trademark and Copyright Journal, No. 301, October 28, 1976, page D-1.

[12] 5 USC 552.

[13] *Irons v. Gottschalk*, Slip Opinion, No. 74-1365 (D.C. Cir., October 21, 1976).

Amended § 1.14(b) allows public inspection of abandoned applications referred to in defensive publications. The comments received on the proposed amendment on this topic in 1974 expressed no opposition and the proposal is adopted without change.

The amendment is intended to encourage use of the defensive publication program provided under § 1.139. The objective of that program is to make available to the public the technical disclosure of applications in which the owner prefers to publish an abstract in lieu of obtaining an examination. Existing §§ 1.11(b) and 1.139 open the complete defensive publication application to inspection by the general public upon publication of the abstract. With the amendment, an abandoned application referred to in a defensive publication application will likewise be open to public inspection, avoiding any need to repeat its contents in the defensive publication application. Thus, public availability of the applications involved should be of benefit both to the applicant and the public.

A suggestion was made that the section be extended still further to include abandoned applications referred to in foreign patents. This suggestion, however, goes too far beyond the proposal that was published and has too uncertain an impact to be adopted at this time.

Amended § 1.11(a) provides earlier access to the file of an interference which involved a patent or an application on which a patent has issued. All comments that were submitted on the 1974 proposal on this topic were favorable and two commentators felt the proposal should be extended further. The proposal is being adopted without change.

Under present practice, access to the file of an interference is not permitted until judicial review of the decision of the Board of Patent Interferences has been exhausted. The amended section allows access to the file after final decision of the Board of Patent Interferences if that decision is an award of priority as to all parties. It is believed that such earlier access will be of benefit to members of the public by making available information relevant to the issuance of the patent whether or not the interference decision is still being adjudicated.

PATENT APPEALS

Section 1.194 clarifies the circumstances in which oral hearings should be requested, provides for oral arguments by or on behalf of examiners in certain appeals, and reduces the time permitted for oral arguments.

Comments relating to this section were favorable by a very substantial majority, although there were several reservations to the effect that § 1.194(a) tended to discourage or downgrade oral arguments. Participation by examiners was considered to be desirable not only from the standpoint of improving the overall presentation of the argument, particularly in complex cases, but also for the educational and experience benefits to the examiners themselves.

The only opposition to the section was based on the feeling that oral hearings would be discouraged. The rule is intended to discourage oral hearings only to the same extent as the Office's 1975 Official Gazette notice on the subject.[14] Section 1.194(a) indicates that oral hearings should not be requested as a matter of course in every appeal, but only in those circumstances where the appellant feels that such a hearing will be of material assistance to the proper presentation of the appeal. The section expressly provides that equal consideration will be accorded in deciding all appeals, whether or not an oral hearing is held.

In appeals where the appellant has requested an oral hearing, § 1.194(b) provides for oral argument by, or on behalf of, the primary examiner, if such argument is considered to be helpful by either the primary examiner or the Board. This provision incorporates the present practice of permitting examiners to present an oral argument before the Board.[15] It gives the Board additional discretionary authority to request presentation of an oral argument by, or on behalf of the examiner to ensure that all issues are fully and accurately presented.

Section 1.194(c) provides, as does existing § 1.194, that appeals will be assigned for consideration and decision without an oral hearing where none has been requested by the appellant. Where an oral hearing has been requested, a day of hearing will be set, and both appellant and the primary examiner will be notified. A provision for notice to the examiner is added to the proposed version. Additionally, § 1.194(c) reflects the present practice of limiting oral argument on behalf of the appellant to twenty minutes.[16] The time permitted for argument by the examiner has been shortened from twenty minutes, as proposed, to fifteen minutes. The examiner, unlike the appellant, will not ordinarily need time to present the facts of the case or for rebuttal.

In any appeal where oral argument is to be presented by, or on behalf of, the primary examiner, the appellant will be given due notice of that fact.

Proposed § 1.196(b) would have authorized the Board of Appeals to reject allowed claims, in cases before it, whenever the Board had knowledge of grounds for so doing.

While a majority of those commenting on this section favored in principle the concept of allowing the Board to have this right, significant concern was voiced that there was no statutory authority for the Board to actually reject allowed claims. Further, the question of proper authority for judicial review of such action by the Board was a matter of concern. Other reasons advanced in opposition to the section were that applicants would be inhibited from appealing by the risk of having allowed claims rejected and that the proposal would create a higher presumption of validity in cases reviewed by the Board. A significant number commented that it would be more appropriate for the Board to remand the case to the primary examiner for consideration of the grounds raised by the Board. This would afford the applicant an opportunity to demonstrate the patentability of the claims and would remove any question as to statutory authority.

In view of the comments received, existing § 1.196(b) will not be modified, but a new § 1.196(d) is added providing express authority for the Board of Appeals to include, in its decision, a statement of any grounds for rejecting any allowed claim that it believes should be considered by the primary examiner. Section 1.196(d) provides that the Board may remand the case to the examiner for such consideration, and that the applicant shall have an opportunity to respond to the grounds set forth by the Board prior to consideration by the examiner. If the previously allowed claims are rejected by the examiner, the rejection may be appealed to the Board.

The new section further provides that a decision of the Board which includes a remand will not be considered as a final decision in the case, but that the Board, following conclusion of the proceedings before the primary examiner, will either adopt its earlier decision as final or will render a new decision based on all appealed claims, as it considers appropriate. In either case, final action by the Board will give rise to the existing alternatives available to an appellant following a decision by the Board.

In situations where the primary examiner concludes after consideration of all the evidence and argument that the remanded claims should be allowed, the new rule dealing with reasons for allowance (§ 1.109) provides an appropriate mechanism for him to explain, on the record, his reasoning for coming to this conclusion, notwithstanding the grounds set forth by the Board in its statement.

Promulgation of new § 1.196(d) does not affect the Board's existing authority to remand a case to the primary examiner without rendering a decision in appropriate circumstances. Section 1.196(d) is not intended as an instruction to the Board to reexamine every allowed claim in every appealed application. It is, rather, intended to give the Board express authority to act when it becomes apparent, during the consideration of rejected claims, that one or more allowed claims may be subject to rejection on either the same or on different grounds from those applied against the rejected claims.

REASONS FOR ALLOWANCE

New § 1.109 is intended to emphasize and formalize the examiner's authority to state his reasoning for allowing a claim or claims. The authority is discretionary with the examiner and is only to

[14] See notice of March 20, 1975, 933 O.G. 1010.

[15] MPEP, § 1209.

[16] See notice of March 20, 1975, 933 O.G. 1010.

be used when the record does not otherwise reveal the reasons for allowance.

A majority of the comments received favored the rule as proposed because it would tend to provide courts and others who were reviewing the patent with a clearer record. Those who opposed the rule most often gave the reason that the examiner might fail to state all the reasons or the strongest reasons why a claim was allowed, which could place unnecessary limitations on the claims or create an estoppel in subsequent litigation or licensing.

To help insure that the examiner's statement of his reasoning in allowing a claim will not unnecessarily limit the claims or create an estoppel, a final sentence is added to the proposal which states that failure of the applicant to comment upon or rebut the examiner's reasoning "shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner."

Several commenters suggested that stricter enforcement of §§ 1.111 and 1.133 would eliminate the need for a new rule concerning reasons for allowance. Situations exist, however, where a statement of reasons for allowance could be helpful, for example when an examiner withdraws a rejection for reasons not suggested by the applicant; when an applicant submits several arguments for allowing a claim and the examiner finds not all of them persuasive; when an examiner allows a claim on the first Office action after citing very close prior art; and when the examiner allows a claim after remand from the Board of Appeals (see new § 1.196(d)).

The first sentence of the proposed rule is changed to define more precisely the circumstances in which an examiner's statement is appropriate, as well as to define more precisely the content of the statement. The statement will include the examiner's "reasoning." The examiner may state his reasoning whenever he "believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims."

Several persons commented that the rule should provide a procedure for appeal from the examiner's statement of his reasoning. The rule does permit applicants to comment upon the examiner's reasoning. If the applicant does not wish to comment, he may reserve for a later proceeding, without prejudice, any rebuttal.

Text of Rules Adopted

After consideration of the comments received and pursuant to the authority contained in § 6 of Title 35 of the United States Code, Part 1 of Title 37 of the Code of Federal Regulations is amended as set forth below.

1. Section 1.11 is revised to read as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings, and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After an award of priority by the Board of Patent Interferences as to all parties, the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

(b) All reissue applications and all applications in which the Office has accepted a request filed under § 1.139, and related papers in the application file, are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. The filing of reissue applications will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

2. In § 1.14 paragraphs (b) and (d) are revised to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application which is open to inspection pursuant to § 1.139, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

* * * * *

(d) Any decision of the Board of Appeals or the Board of Patent Interferences, or any decision of the Commissioner on petition, not otherwise open to public inspection shall be published or made available for public inspection if: (1) The Commissioner believes the decision involves an interpretation of patent laws or regulations that would be of important precedent value; and (2) the applicant, or any party involved in the interference, does not, within two months after being notified of the intention to make the decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information. If a decision discloses such information, the applicant or party shall identify the deletions in the text of the decision considered necessary to protect the information. If it is considered the entire decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of decisions are made public over their objection. See § 2.27 for trademark applications.

3. Section 1.51 is revised to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks. A complete application comprises:

(1) A specification, including a claim or claims, see §§ 1.71 to 1.77.

(2) An oath or declaration, see §§ 1.65 and 1.68.

(3) Drawings, when necessary, see §§ 1.81 to 1.88.

(4) The prescribed filing fee. (See 35 USC section 41 for filing fees.)

(b) Applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. See §§ 1.97 through 1.99.

4. In § 1.52 paragraph (a) is revised to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The specification and oath or declaration must be in the English language except as provided in § 1.69. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing or printing thereon to permit the production of readily legible copies in any number by use of photographic, electrostatic, photooffset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

* * * * *

5. Section 1.56 is revised to read as follows:

§ 1.56 Duty of disclosure; striking of applications.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the inventor, on each attorney or agent who prepares or prosecutes the application and on every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application. All such individuals have a duty to disclose to the Office information they are aware of which is material to the examination of the application. Such information is material where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. The duty is commensurate with the degree of involvement in the preparation or prosecution of the application.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility for the preparation or prosecution of the application or through an inventor who is acting in his own behalf. Disclosure to such an attorney, agent or

inventor shall satisfy the duty, with respect to the information disclosed, of any other individual. Such an attorney, agent or inventor has no duty to transmit information which is not material to the examination of the application.

(c) Any application may be stricken from the files if: (1) Signed or sworn to in blank, or without actual inspection by the applicant; or

(2) Altered or partly filled in after being signed or sworn to.

(d) An application shall be stricken from the files if it is established by clear and convincing evidence that any fraud was practiced or attempted on the Office in connection with it or that there was any violation of the duty of disclosure through bad faith or gross negligence.

6. In the heading preceding § 1.65 "STATEMENT;" is deleted.

7. In § 1.65 the heading and paragraph (a) are revised to read as follows:

§ 1.65 Oath or declaration.

(a) (1) The applicant, if the inventor, must state that he verily believes himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used in the United States before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to his application or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. He must acknowledge a duty to disclose information he is aware of which is material to the examination of the application. He shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by himself, or his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (*a*) be sworn to (or affirmed) as provided in § 1.66, or (*b*) include the personal declaration of the applicant as prescribed in § 1.68. See § 1.153 for design cases and § 1.162 for plant cases.

* * * * *

8. Section 1.69 is added to read as follows:

§ 1.69 Foreign language oaths and declarations.

(a) Whenever an individual making an oath or declaration cannot understand English, the oath or declaration must be in a language that such individual can understand and shall state that such individual understands the content of any documents to which the oath or declaration relates.

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be accompanied by a verified English translation, except that in the case of an oath or declaration filed under § 1.65, the translation may be filed in the Office no later than two months after the filing date.

9. The heading "PRIOR ART STATEMENT" is added following § 1.95 and preceding § 1.97.

10. Section 1.97 is added to read as follows:

§ 1.97 Filing of prior art statement.

(a) As a means of complying with the duty of disclosure set forth in § 1.56, applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. The statement may either be separate from the specification or may be incorporated therein.

(b) The statement shall serve as a representation that the prior art listed therein includes, in the opinion of the person filing it, the closest prior art of which that person is aware; the statement shall not be construed as a representation that a search has been made or that no better art exists.

11. Section 1.98 is added to read as follows:

§ 1.98 Content of prior art statement.

(a) Any statement filed under § 1.97 or § 1.99 shall include: (1) A listing of patents, publications or other information and (2) a concise explanation of the relevance of each listed item. The statement shall be accompanied by a copy of each listed patent or publication or other item of information in written form or of at least the portions thereof considered by the person filing the statement to be pertinent.

(b) When two or more patents or publications considered material are substantially identical, a copy of a representative one may be included in the statement and others merely listed. A translation of the pertinent portions of foreign language patents or publications considered material should be transmitted if an existing translation is readily available to the applicant.

12. Section 1.99 is added to read as follows:

§ 1.99 Updating of prior art statement.

If prior to issuance of a patent an applicant, pursuant to his duty of disclosure under § 1.56, wishes to bring to the attention of the Office additional patents, publications or other information not previously submitted, the additional information should be submitted to the Office with reasonable promptness. It may be included in a supplemental prior art statement or may be incorporated into other communications to be considered by the examiner. Any transmittal of additional information shall be accompanied by explanations of relevance and by copies in accordance with the requirements of § 1.98.

13. Section 1.109 is added to read as follows:

§ 1.109 Reasons for allowance.

If the examiner believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims, the examiner may set forth such reasoning. This shall be incorporated into an Office action rejecting other claims of the application or be the subject of a separate communication to the applicant. The applicant may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner.

14. In § 1.175 paragraph (a) is revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had a right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) When the applicant is aware of prior art or other information relevant to patentability, not previously considered by the Office, which might cause the examiner to deem the original patent wholly or partly inoperative or invalid, particularly specifying such prior art or other information and requesting that if the examiner so deems, the applicant be permitted to amend the patent and be granted a reissue patent.

(5) Particularly specifying the errors or what might be deemed to be errors relied upon, and how they arose or occurred.

(6) Stating that said errors, if any, arose "without any deceptive intention" on the part of the applicant.

* * * * *

15. Section 1.176 is revised to read as follows:

§ 1.176 Examination of reissue.

An original claim, if re-presented in the reissue application, is subject to re-examination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications, but not sooner than two months after announcement of the filing of the reissue application has appeared in the Official Gazette.

16. Section 1.194 is revised to read as follows:

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which the appellant considers such a hearing necessary or desirable for a proper presentation of his appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Appeals as appeals decided after oral hearing.

(b) If appellant requests an oral hearing, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request for oral hearing has been made by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

17. Section 1.196 is amended by adding new paragraph (d) to read as follows:

§ 1.196 Decision by the Board of Appeals.

* * * * *

(d) Although the Board of Appeals normally will confine its decision to a review of rejections made by the primary examiner, should it have knowledge of any grounds for rejecting any allowed claim that it believes should be considered, it may include in its decision a statement to that effect and remand the case to the primary examiner for consideration thereof. In such event, the Board shall set a period, not less than one month, within which the applicant may submit to the primary examiner an appropriate amendment, or a showing of facts or reasons, or both, in order to avoid the grounds set forth in the statement of the Board of Appeals. If the primary examiner rejects the previously allowed claim or claims on the basis of such statement, the applicant may appeal to the Board of Appeals from the rejection. Whenever a decision of the Board of Appeals includes a remand, that decision shall not be considered as a final decision in the case, but the Board of Appeals shall, upon conclusion of the proceedings before the primary examiner on remand, either adopt its decision as final or render a new decision on all of the claims on appeal, as it may deem appropriate.

18. Section 1.291 is revised to read as follows:

§ 1.291 Protests and prior art citations by public.

(a) Protests against pending applications will be acknowledged and referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file and, if timely submitted and accompanied by a copy of each prior art document relied upon, will be considered by the examiner.

(b) Citations of prior art and any papers related thereto may be entered in the patent file after a patent has been granted, at the request of a member of the public or the patentee. Such citations and papers will be entered without comment by the Patent and Trademark Office.

(c) Protests and prior art citations by the public and any accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or patentee or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible.

19. In § 1.292 paragraph (b) is revised to read as follows:

§ 1.292 Public use proceedings.

* * * * *

(b) The petition and accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible. The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file.

20. Section 1.346 is revised to read as follows:

§ 1.346 Signature and certificate of attorney.

Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent and Trademark Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits or declarations required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief, there is good ground to support it, including any allegations of improper conduct contained therein; and that it is not interposed for delay.

Effective date: These amendments become effective on March 1, 1977, except for §§ 1.51, 1.97, 1.98, and 1.99 which become effective on July 1, 1977, and §§ 1.65 and 1.69 which become effective on January 1, 1978.

Dated: January 18, 1977.

C. MARSHALL DANN,
Commissioner of Patents and Trademarks.

Approved: January 19, 1977.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.77-2528 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART VII

DEPARTMENT OF COMMERCE

Economic Development Administration

■

PUBLIC WORKS GRANT AND LOAN PROGRAM

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

Grant and Loan Program

Pursuant to the authority vested in it by section 701 of the Public Works and Economic Development Act of 1965, as amended (hereafter referred to as the Act), the Economic Development Administration (EDA) hereby amends 13 CFR Parts 301, 305, and 309 for the purpose of revising regulations which affect the Public Works Program. These regulations are being revised to reflect the changes made to the Act by Pub. L. 94-487.

Section 301.2 is amended by adding a definition for the term "community development corporation" after the definition of "Assistant Secretary". The term is defined to implement the new authority contained in section 101(c) of the Act which allows the Assistant Secretary to waive or reduce the non-Federal share of the cost of public works impact projects sponsored by such entities. The definition of "community development corporation" encompasses two types of bodies. The first is a public organization created by authority of State or local law to further the development of the area; in order to qualify, such an organization cannot have powers of taxation. The second is a private non-profit organization whose purpose is to further the development of the area.

Section 305.5(b) is revised and expanded to reflect the several amendments made to section 101(c) of PWEDA. Paragraph (1) of subsection (b) now lists the three occasions when the Assistant Secretary is empowered to reduce or waive the non-Federal share of the costs of a public works project, and the specific circumstances which are attendant to each of these occasions.

Paragraph (b)(1)(i) describes the authority with respect to projects sponsored by Indian tribes which are concerned with general economic development. Here, the Assistant Secretary has discretion to waive or reduce the non-Federal share of the project's cost.

Paragraph (b)(1)(ii) concerns public works impact projects sponsored by States or political subdivisions. The Assistant Secretary must waive or reduce the non-Federal share of the project's cost if the applicant can demonstrate that it has exhausted its effective taxing and borrowing capacity. Exhaustion of effective taxing and borrowing capacity is not defined exclusively; rather, § 305.5(b)(1)(ii)(A) states that it can be demonstrated "by showing legal limitations on debt and tax assessments and rates, severe financial difficulties, or other factors" preventing the applicant from raising the required non-Federal share. This explanation was developed from suggestions in H.R. Rep. No. 94-1075, 94th Cong., 2d Sess. (1976), at page 4.

Paragraph (b)(1)(iii) outlines the treatment of public works impact projects sponsored by community development corporations. The Assistant Secretary has discretion to waive or reduce the non-Federal share of the project's cost if the applicant can demonstrate that it has exhausted its effective borrowing capacity. Because of Congressional concern noted at page 4 of S. Rep. No. 94-839, 94th Cong., 2d Sess. (1976), a qualification has been added to this paragraph limiting use of this authority to situations where the project would otherwise be lost because of the applicant's inability to provide the non-Federal share. Here the phrase "exhaustion of effective borrowing capacity" is explained in similar terms to those describing "exhaustion of effective taxing and borrowing capacity" in paragraph (b)(1)(ii).

Paragraph (3) of subsection (b) is revised by the addition of a new paragraph (iii) in the list of maximum grant rates. This new paragraph (iii) describes the 100 percent grants for projects sponsored by community development corporations. The remaining paragraphs in the list are renumbered accordingly.

Section 305.5(c)(1) is deleted, because of the new section 107 of PWEDA. Section 305.5(c)(1) had allowed the Assistant Secretary, under certain circumstances, to increase a project's grant rate if the project was experiencing cost overruns. This authority directly conflicts with section 107 which states that while grants may be made for projects experiencing cost overruns, in no case may the grant rate exceed that provided for in the original grant.

Section 305.6(a) is revised by correcting its reference to § 305.5(b)(3) to reflect the changes made to that section which are described above.

Part 305 is revised by adding a new section 8 to implement the new section 107 of PWEDA. Section 305.8 describes grants to aid projects experiencing cost overruns. These grants may be used to supplement the amount of any grant made under title I subject to certain conditions. First, the percentage of the Federal share of the project's cost may not exceed the percentage provided for in the grant agreement. The project must be not yet completed, and it must be constructed according to its original designs and specifications. The cost overrun must result from increases in construction costs.

Section 305.53 is revoked because of the deletion of sections 101(e) and 201(d) of PWEDA. Section 305.53 had precluded financial assistance to public service and development facilities which would compete with privately owned public utilities.

Section 309.4 is revised to incorporate the changes made to section 704(e). New paragraphs (a)(2)(ii) and (b)(2)(ii) describe the conditions under which electric and gas facilities can qualify for financial assistance.

First, the facility must be intended to serve an industrial park or an industrial or commercial area of a community. The area which the project will serve must have lost or be faced with a loss of jobs due to the actual or threatened interruption or curtailment of energy supplies, or it must be able to create new jobs based on an assured supply of energy.

Second, the Assistant Secretary must determine that financing for the project is not available from either private sources or other Federal agencies on terms which would permit the accomplishment of the project. Finally, the appropriate Federal or State regulatory body must determine that the project will not compete with existing public utilities or, if it would compete, that existing public utilities cannot meet demands for energy.

A new § 309.4(c) establishes an annual limit of seven million dollars on the amount of assistance which may be granted to projects involving energy facilities. Also, necessary technical and format changes have been made where appropriate in § 309.4.

In that the matters contained herein relate to the EDA grant and loan program, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of the proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, in accordance with the spirit of public policy set forth in 5 U.S.C. 553, interested persons may submit written comments or suggestions regarding these amendments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230, on or before February 28, 1977. Until such time as further changes are made, these amendments shall remain in effect thus permitting the public business to proceed more expeditiously.

Consideration has been given as to whether the matters set forth in these regulations constitute a major proposal with an inflationary impact within the meaning of OMB Circular No. A-107 and the interpretative guidelines issued by the Department of Commerce. It has been determined that these regulations do not constitute action requiring an inflationary impact statement.

In consideration of the foregoing, 13 CFR Chapter III is hereby amended.

PART 301—ESTABLISHMENT AND ORGANIZATION

1. Section 301.2 is amended by adding after the definition of "Assistant Secretary" the following new definition:

§ 301.2 Definitions.

* * * * *

"Community development corporation" means (i) Any public organization or association created under the authority of State or local law to further the development of the area but which has no power of taxation; and

(ii) Any private nonprofit organization whose purpose is to further the development of the area.

* * * * *

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. Section 305.5 is amended as follows:

(a) Paragraph (b) (1) is revised and new subdivisions (i), (ii), and (iii) are added to it;

(b) Paragraph (b) (3) is amended by adding a new subdivision (iii) to it and renumbering the subsequent paragraphs accordingly;

(c) Paragraph (c) (1) is deleted in its entirety. As amended, § 305.5(b) (1) and (b) (3) read as follows:

§ 305.5 Supplementary grants.

* * * * *

(b) In determining the amount of any supplementary grant assistance which would raise the EDA share to more than 50 percent of the aggregate cost of a project, the Assistant Secretary will take into consideration the following factors:

(1) The nature of the project to be assisted.

(i) Projects of Indian tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or waive the non-Federal share for such projects.

(ii) In the case of projects located in redevelopment areas designated under section 401(a) (6) of the Act and applied for by States or political subdivisions thereof which have demonstrated exhaustion of their effective taxing and borrowing capacity, the Assistant Secretary shall reduce or waive the non-Federal share for such projects.

(A) Exhaustion of effective taxing and borrowing capacity can be demonstrated by showing legal limitations on debt and tax assessments and rates, severe financial difficulties or other factors which prevent the applicant from obtaining the funds necessary for the non-Federal share of the project costs.

(iii) In the case of projects located in redevelopment areas designated under section 401(a) (6) of the Act and applied for by community development corporations which have exhausted their effective borrowing capacity, the Assistant Secretary may reduce or waive the non-Federal share for such projects.

(A) This authority will be used when necessary to prevent the loss of a project because of the applicant's inability to provide the non-Federal share.

(B) Exhaustion of effective borrowing capacity can be demonstrated by showing legal limitations on debt, or practical limitations on increasing debt, severe financial difficulties or other factors which prevent the applicant from borrowing the funds necessary for the non-Federal share of the project costs.

* * * * *

(3) * * *

(iii) Projects located in redevelopment areas designated under section 401(a) (6) of the Act applied for by community development corporations (as defined in 13 CFR 301.2) which have demonstrated they have exhausted their effective borrowing capacity..... 100

* * * * *

(c) * * *

(1) [Deleted]

* * * * *

2. Section 305.6 is amended by revising paragraph (a) to read as follows:

§ 305.6 Ten percent bonus supplemental grants.

(a) Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate project cost or 100 percent for projects listed in § 305.5(b) (3) (i), (ii), and (iii), the Assistant Secretary may increase the amount of grant assistance for projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project if:

* * * * *

3. Part 305 is amended by adding a new § 305.8 to read as follows:

§ 305.8 Grants for construction cost increases.

(a) For the purposes of this section, "construction cost increases" means those costs which the applicant incurs or will incur in completing the project according to the original designs and specifications beyond the project costs set forth in the grant agreement.

(b) Subject to the limitation that the percentage of the Federal share of a project's cost shall not exceed that percentage originally provided for in the grant agreement, the Assistant Secretary may increase the amount of any grant under Title I of the Act made to a project which meets the following conditions:

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

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

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

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

§ 305.53 [Revoked]

4. Section 305.53 is revoked in its entirety.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. Section 309.4 is revised, by adding new paragraphs (a) (2) (ii), (b) (2) (ii) and (c) and by making certain technical and format changes, to read as follows:

§ 309.4 Electric and gas facilities.

(a) Except for those types of facilities listed in paragraph (a) (2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the generation, transmission, or distribution of electrical energy, regardless of whether such activities constitute the primary or secondary functions of the facility which is to receive financial assistance under the Act, and regardless of whether such activities are solely for on-site consumption.

* * * * *

(2) * * *

(ii) Local facilities serving industrial parks or industrial commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of electrical energy supplies, or which could create new jobs through an assured supply of electrical energy, provided the following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(1) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(2) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of electrical energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) An internal electrical system consisting of the electrical installation on the consumer's side of the distribution system metering station, providing it meets the requirements set forth below. The internal electrical system may include conductors, conduits, structures, switch-gear, transformers, and other appurtenances. In order for an internal electrical system to qualify as an exception, it must meet the following requirements:

(A) Ownership of the system must lie with the owners of the facilities, or portion thereof, served by the internal electrical system; and

(B) Electricity carried by the internal electrical system may not be resold.

(iv) Standby electrical generating equipment: *Provided:*

(A) Such equipment is neither of sufficient capacity to, nor intended to, provide electricity for the regular sustained operation of the facility which is to receive financial assistance under the Act; and

(B) Significant damage or harm could result from an electric power failure in the absence of such standby agreements.

(b) Except for those types of facilities listed in paragraph (b) (2) of this section, no financial assistance authorized under the Act will be used to finance the cost of facilities for the production or transmission of gas (natural, manufactured or mixed), regardless of whether such activities constitute the primary or secondary function of the facility which is to receive financial assistance under the Act, and regardless of whether such

activities are solely for on-site consumption.

* * * * *

(2) * * *

(ii) Local facilities serving industrial parks or industrial or commercial areas of communities which have lost or are threatened with a loss of jobs due to the interruption or curtailment, or threat thereof, of gas energy supplies or which could create new jobs through an assured supply of gas energy: *Provided,* The following requirements are met.

(A) The Assistant Secretary determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of the Assistant Secretary, would permit completion and operation of the project.

(B) The Federal or State regulatory body regulating such energy facility makes one of the following determinations:

(1) The facility to be financed would not compete with existing public utilities providing energy to the public at rates or charges subject to control by the regulatory body; or

(2) The facility to be financed would compete with existing public utilities, but the area to be served by the facility needs increased supplies of gas energy and existing public utilities are not able to meet this demand through existing facilities or are not willing to meet this demand through expansion.

(iii) Facilities for the distribution of gas as described in paragraph (b) (1) of this section.

(c) Not more than seven million dollars a year shall be expended for projects described in paragraphs (a) (2) and (b) (2) of this section.

(Pub. L. 94-487, 90 Stat. 2331 (42 U.S.C. 3121 et seq.); sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, 40 FR 56702.)

Effective date: This amendment becomes effective on January 28, 1977.

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

Dated: January 21, 1977.

JOHN W. EDEN,
Assistant Secretary for Economic Development.

[FR Doc.77-2716 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

SECTION 8 HOUSING ASSISTANCE PROGRAMS—SPECIAL ALLOCATIONS

Projects With HUD-Insured and HUD-Held Mortgages

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-378]

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

FINAL RULE

The Department, at 41 FR 12170 (March 23, 1976) published interim regulations to amend Title 24 of the Code of Federal Regulations by adding a new Part 886, Subpart A, to Chapter VIII authorizing use of Section 8 assistance in existing multifamily projects with HUD-Insured or HUD-Held mortgages, including projects sold by HUD subject to purchase money mortgages and Section 202 projects. The name of Part 886 is being changed from "Section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects Insured or Formerly Insured by HUD" to "Section 8 Housing Assistance Payments Program—Special Allocations."

The Department received comments from eleven persons and institutions during the 15-day review period, and after having carefully considered these comments, is publishing these regulations in final form.

The majority of the comments proposed amendments to the interim rule which would have been inconsistent with the other elements of the Section 8 program, or which are not possible under the law. For example, several persons suggested that the maximum term of the Section 8 contract be extended to be coterminous with the project mortgage; however, Section 8(d)(2) of the U.S. Housing Act of 1937 specifically limits contract terms on existing housing to 15 years. Where comments on the interim regulation call for changes in policy positions common throughout the Section 8 program, the Department has noted the proposals and will consider them in the context of the Section 8 programs generally.

Several comments were made on the process for inviting and selecting among applications. The Department reviewed these comments carefully, and concluded that the criteria for choosing among potentially eligible projects are reasonably consistent with the program goals as stated in the preamble to the interim regulations. In the same context, the Department is unwilling to forego the selection criterion which requires a demonstration that the infusion of Section 8 assistance can reasonably be expected to solve an identifiable problem and provide a reasonable assurance of long-term project viability; projects which are not likely to remain viable over the long term, even with the increased level of assistance available under Section 8, are not considered an advantageous use of limited Section 8 contract authority.

Four respondents specifically requested that non-insured projects, especially state-financed Section 236 subsidized projects, be made eligible for assistance under this part. Non-insured projects do not fall under the regulations covering insured projects, and, therefore, this issue is not relevant.

In another instance it was recommended that the regulations be modified to apply to Section 236 projects not yet finally endorsed, with the justification that this will assure the continued availability of units to families for whom they were intended. Because the program is available to projects not yet finally endorsed, with certain conditions, no further comment is necessary.

Three comments suggested that this Department is proposing to bypass the Public Housing Agency with the new regulations. This program is not designed to reduce the functions already performed by the PHA. However, to meet the additional housing needs and goals the program is being administered as a part of the HUD Loan Management activity, thereby limiting the involvement of the PHA. The PHA is invited to participate in the supervision of eviction proceedings because of their expertise in this function.

One respondent specifically discussed the objective of achieving economic integration which he felt would be undermined by the steering of prospective tenants to HUD-insured projects under this program. The purpose of this program is to assist families presently in occupancy in a HUD-insured or HUD-assisted project to more easily carry their rental burden. The program is not intended to be a method by which a large turnover in project occupancy is effected, and, therefore, an adverse impact upon a neighborhood or community in which the project is located should not occur.

In response to the comments and review of the interim rule within the Department, the final rule incorporates the following changes:

1. The name of the part has been changed to Part 886—Section 8 Housing Assistance Payments Program—Special Allocations, to broaden the scope of the part and provide greater flexibility in the organization of Chapter VIII.

2. Language has now been inserted in § 886.101(c) to make clear that the primary goal of the Program is to reduce claims on the insurance fund by aiding those FHA-insured or Secretary-held projects which are in serious financial difficulties. To the extent resources remain available after taking care of these priority projects, assistance may also be provided to projects with potentially serious financial problems and which have a high probability of producing claims on the insurance fund with the succeeding five years.

3. A number of revisions have been made to conform this regulation to the revised Section 8 Existing Housing Regulations (Part 882), as published for effect on May 13, 1976. These changes are:

a. The definition of "Allowance for Utilities and Other Services" has been revised by deleting the second sentence.

b. The definition of "Eligible Family" has been revised.

c. Section 886.110 (a) and (b) have been revised to authorize the Regional Administrator, rather than the Assistant Secretary, to approve Gross Rents up to 20 percent above Fair Market Rents in certain circumstances.

d. "Housing Quality Standards", § 886.113(b)(2), has been revised in part to conform to the Existing Housing Regulations.

e. Section 886.112 has been revised to clarify that when special additional adjustments are approved by HUD, they "shall", rather than "may" be granted.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A finding that this regulation is not subject to inflation impact statement requirements has also been made in accordance with HUD procedures. A copy of these findings will be available for public inspection during regular business hours in the office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Chapter VIII is amended by revising Part 886, Subpart A, to read as follows:

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

Sec.

886.101 Applicability.
886.102 Definitions.
886.103 Allocation of Section 8 contract authority.
886.104 Invitations to participate.
886.105 Content of application.
886.106 Notices.
886.107 Approval of applications.
886.108 Maximum annual contract commitment.
886.109 Housing assistance payments to owners.
886.110 Contract rents.
886.111 Term of contract.
886.112 Rent adjustments.
886.113 Housing quality standards.
886.114 Equal opportunity requirements.
886.115 [Reserved]
886.116 Security and utility deposits.
886.117 Establishment of income limit schedules; 30 percent. Occupancy by very low income families.
886.118 Establishment of amount of housing assistance payments.
886.119 Responsibility of owner.
886.120 Responsibility for contract administration.
886.121 Marketing.
886.122 Lease requirements
886.123 Maintenance, operation, and inspections.
886.124 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.
886.125 Overcrowded and underoccupied units.
886.126 Adjustment of allowance for utilities and other services.
886.127 Inapplicability of low rent public housing model lease and grievance procedures.

Sec.
886.128 Evictions.
886.129 Reduction of number of contract units for failure to lease to eligible families.
886.130 HUD Review of contract compliance.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3536(d)); sec. 5(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c (b)); sec. 3 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

§ 886.101 Applicability.

(a) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families in eligible projects under Section 8 Project commitments pursuant to provisions of section 8 of the U.S. Housing Act of 1937 ("Act"). As used in this Part, "Project" or "Eligible Project" means any existing subsidized or unsubsidized multifamily residential project which is subject to a mortgage insured pursuant to any section of the National Housing Act, any such project the mortgage for which has been assigned to the Secretary, any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage, or a project for the elderly financed under Section 202 of the Housing Act of 1959.

(b) Since HUD, as part of its loan management activities, is responsible for most of the activities assigned to a PHA in the Section 8 Existing Housing program, duplicative PHA activities are not required. However, because of the PHAs' expertise in connection with evictions, the PHA will be invited to perform the function of authorization of evictions, for an agreed fee. In addition, the PHA may be invited to perform inspections of dwelling units, on a fee basis, if HUD determines that such inspections will be performed more efficiently and economically by the PHA. The Contract will be directly between HUD and the Owner, with the PHA as a party for the purpose of supervising evictions and for such other purposes as may be negotiated.

(c) The primary goal of the Section 8 Loan Management Set-Aside Program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-Held projects with immediately or potentially serious financial difficulties. A first priority should be given to projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

§ 886.102 Definitions.

Act. The United States Housing Act of 1937.

Allowance for Utilities and Other Services ("Allowance"). An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

Contract (See *Section 8 Contract*).

Contract Rent. The rent payable to the Owner as required by HUD in connection with its mortgage insurance and/or lending functions, including the portion of the rent payable by the Family, not to exceed the amount stated in the Section 8 Contract as such amount may be adjusted in accordance with § 886.112. 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 § 886.113 are met.

Eligible Family ("Family"). A Family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this part. The term Family includes an elderly, mentally or physically handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 3(2) of the Act.

Eligible Project. See § 886.101.

Fair Market Rent. (a) The rent which is determined by HUD as the Fair Market Rent for Existing Housing under Section 8. This Fair Market Rent is the rent, including utilities (except telephone), ranges and refrigerators, parking, 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 by various sizes (number of bedrooms) and types (e.g., elevator and non-elevator).

(b) The Fair Market Rent, minus the amount of any applicable Allowance for Utilities and Other Services payable directly by the Family, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be higher or lower as provided in § 886.110 or § 886.112.

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.

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 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 also 24 CFR Part 889).

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.

Lease. A written agreement between an Owner and an Eligible Family for leasing of a Decent, Safe and Sanitary dwelling unit in accordance with the applicable 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. The mortgagor of record under a multifamily project mortgage insured, or held by the Secretary, including purchase money mortgages; the owner of a Section 202 project.

Project. See §886.101.

Project Account. The account established and maintained in accordance with §886.108.

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:

Secretary. The Secretary of Housing and Urban Development.

Section 8 Contract ("Contract"). A written Contract between the Owner of an Eligible Project and HUD for providing Housing Assistance Payments to the Owner on behalf of Eligible Families pursuant to this part.

Subsidized Rent. In section 221(d)(3) BMIR, section 202, or section 236 projects, the rent payable to the project, based on the particular circumstances of any assisted tenant in the absence of any Housing Assistance Payment.

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.

§ 886.103 Allocation of Section 8 contract authority.

HUD will allocate to field offices contract authority for Section 8 project commitments for metropolitan and nonmetropolitan areas in conformance with section 213(d) of the HCD Act.

§ 886.104 Invitations to participate.

(a) HUD shall identify Eligible Projects which are most likely to meet the selection criteria set forth in § 886.117, and shall invite the Owners of such projects to make application for Section 8 assistance under this part.

(b) An Owner of an Eligible Project who has not been notified pursuant to paragraph (a) of this section may also make application for such assistance.

§ 886.105 Content of application.

Applications shall be in the form and in accordance with the instructions prescribed by HUD, and shall include:

(a) Information on Gross Income, family size, and amount of rent paid to the project by Families currently in residence;

(b) Information on vacancies and turnover;

(c) Estimate of effect of the availability of Section 8 assistance on marketability of units in the project;

(d) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations;

(e) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested; and

(f) Affirmative Fair Housing Marketing Plan on a HUD-prescribed form.

§ 886.106 Notices.

(a) Within 10 days of receipt of each completed application by the HUD field office, the field office shall send to the chief executive officer of the unit of general local government in which the proposed assistance is to be provided, a notification in a form prescribed by HUD for purposes of compliance with section 213 of the HCD Act.

(b) If an application is approved, HUD shall send to the Owner a notice of application approval. If an application can be approved only on certain conditions, HUD shall notify the Owner of the conditions and specify a time limit by which those conditions must be met. If an application is disapproved, HUD shall so notify the Owner by letter indicating the reasons for disapproval.

(c) Simultaneously with the issuance of a notice of approval, HUD shall send a letter to the PHA advising it of HUD's intention to enter into a Contract, and inviting the PHA to become a party to the Contract, as provided in § 886.101(b).

§ 886.107 Approval of applications.

HUD shall approve applications, after considering all pertinent information including comments (if any) received during the comment period from the unit of general local government, based on the following criteria:

(a) The Owner's Affirmative Fair Housing Marketing Plan is approvable.

(b) The HUD-approved unit rents are approvable within the Fair Market Rent limitations contained in § 886.110.

(c) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve. Local climatic or geological conditions or local codes are examples which may justify such variations.

(d) A significant number of residents, or potential residents, in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance.

(e) The infusion of Section 8 assistance into the subject project should not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are (1) substantial move-outs from nearby HUD-related projects precipitated by much lower rents in the subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.

(f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.

(g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:

(1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.

(2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.

(3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.

(4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

(5) The major problems are traceable to an inadequate cash flow.

(6) The infusion of Section 8 assistance will solve the cash flow problem by:

(i) Making it possible to grant needed rent increases;

(ii) Reducing turnover, vacancies and collection losses.

(7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.

(h) Any plan submitted pursuant to § 886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

(a) *Number of units assisted.* Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or Section 8 shall be converted and included under the Contract pursuant to this Subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this Subpart unless the Owner proposes and HUD approves such conversion.

(b) *Maximum Annual Contract Commitment.* The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.

(c) *Project Account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD for each project as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 886.109 Housing assistance payments to owners.

(a) Housing Assistance Payments shall be paid to Owners for units under lease by Eligible Families, in accordance with the Contract and as provided in this section. These housing assistance payments will cover the difference between the Contract Rent and the portion of said rent payable by the Family. If the Gross Family Contribution is less than the Allowance for Utilities and Other Services, the difference shall be payable to the Family.

(b) No Section 8 assistance may be provided for any unit occupied by an

Owner; cooperatives are considered rental housing.

(c) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days: *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent, in amounts 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. (See also § 886.116.) The Owner shall not be entitled to any payment under this paragraph unless he: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) 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), and advising them of the availability of the unit, and (3) has not rejected any eligible applicant except for good cause.

§ 886.110 Contract rents.

(a) The sum of the Contract Rents plus an Allowance for Utilities and Other Services shall not exceed the published Section 8 Fair Market Rents for Existing Housing, except that they may be exceeded by (1) up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(b) In the case of any project completed not more than six years prior to the date of the application for assistance under this part, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased (1) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(c) In any case, HUD shall determine and so certify that the Contract Rents for the project do not exceed rents which are reasonable for the location, quality, amenities, facilities, and management and maintenance services in relation to the rents paid for comparable units in the private unassisted market, nor shall the Contract Rents exceed the rents charged by the Owner to unassisted Families for comparable units. HUD shall maintain for three years all certifications and relevant documentation under this paragraph (c).

§ 886.111 Term of contract.

A Contract may be for an initial term of not more than 5 years, renewable for successive 5 year terms by agreement between HUD and the Owner: *Provided,* That the total Contract term, including renewals, shall not exceed 15 years.

§ 886.112 Rent adjustments.

This section applies to adjustments of the dollar amount stated in the Contract as the Maximum Unit Rent. It does not apply to adjustments in rents payable to Owners as required by HUD in connection with its mortgage insurance and/or lending functions.

(a) *Funding of Adjustments.* Housing Assistance Payments will be made in increased amounts commensurate with Contract Rent adjustments up to the maximum annual amount of housing assistance payments specified in the Contract pursuant to § 886.108(b).

(b) *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(2) On each anniversary date of the Contract, the Maximum Unit Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Maximum Unit Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Maximum Unit Rents on the effective date of the Contract.

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessment, 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 automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall Limitation.* Notwithstanding any other provisions of the subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

(e) *Incorporation of Rent Adjustments.* Any adjustment in Maximum Unit Rents shall be incorporated into the Contract by a dated addendum to the Contract establishing the effective date of the adjustment.

§ 886.113 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 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: A cooking stove or range and a refrigerator of appropriate size for the unit, 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 room 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.

(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 properties, 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 unit and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing.* The foregoing standards shall apply except for paragraph (b) of this section, Food Preparation and Refuse Disposal. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and 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).

§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this Subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

§ 886.115 [Reserved]

§ 886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 886.117 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) In filling vacancies, the Owner shall rent to Very-Low Income Families until at least 30 percent of the Contract units are occupied by such Families. Thereafter, the Owner shall exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families.

§ 886.118 Establishment of amount of housing assistance payments.

(a) The amount of Housing Assistance Payment on Behalf of Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (1) no less than 15 percent nor more than 25 percent of the Family's Income, and (2) the Gross Rent taking into consideration the Income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family except that, in the case of a large Very Low-Income Family or a very large Lower-Income Family or a Family with exceptional medical or other unusual expenses, the amount of the Housing Assistance Payment shall be the difference between 15 percent of the Family's Income and the Gross Rent. The term large Family means a Family which includes six or more minors (other than the head of

the Family or spouse). The term very large Family means a Family which includes eight or more minors (other than the head of the Family or spouse).

(b) For any section 221(d)(3) BMIR, section 236, or Section 202 project, the Housing Assistance Payment shall be the amount by which the rent payable by the eligible Family under section 8 is less than the subsidized rent (which subsidy shall not be reduced by reason of any section 8 assistance).

(c) In no event may any tenant benefit from more than one of the following subsidies: Rent Supplements, section 236 deep subsidies, section 23 leasing assistance, and section 8 housing assistance.

§ 886.119 Responsibilities of Owner.

(a) The Owner shall be responsible for management and maintenance of the project in conformance with requirements of the Regulatory Agreement. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions including the taking of applications, selection of Families including verification of Income and other pertinent requirements, and determination of eligibility and amount of Family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of Family rents;

(5) Termination of tenancies, including evictions; except that in cases where the PHA is a party to the Contract, the Owner must obtain the PHA's authorization for an eviction;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexamination of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria;

(8) Redeterminations of amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria as a result of an adjustment by HUD of any applicable Allowance for Utilities and Other Services; and

(9) Compliance with equal opportunity requirements.

(b) In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent Housing Assistance Payments to the mortgagee until such time as the default is cured, or, at the option of the mortgagee and subject to HUD approval, until some other agreed-upon time.

(c) Subject to HUD approval, 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.

§ 886.120 Responsibility for contract administration.

(a) HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(b) The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is not in compliance under the Contract, HUD shall notify the Owner of the actions required to be taken to restore compliance and of the remedies to be applied by HUD including abatement of Housing Assistance Payments and recovery of overpayments, where appropriate; and (2) that if he fails to comply, HUD has the right to terminate the Contract or to take other corrective action. A default under the Regulatory Agreement shall be treated as non-compliance under the Contract.

§ 886.121 Marketing.

(a) Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) In taking applications, selecting families, and all related determinations, the Owner shall comply with the applicable provisions of the Contract.

§ 886.122 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section and shall otherwise conform to the form of Lease approved by HUD.

(a) *Term of Lease.* The term of the Lease shall be for not less than one month, nor more than one year. The Lease may contain a provision permitting termination up to 30 days advance written notice by either party.

(b) *Required 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 or at the direction of the Department of Housing and Urban Development ("HUD") 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-established schedules and criteria; or by reason of adjustment by HUD 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 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.

d. The Lessor shall provide the following utilities, services, and maintenance:

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.

f. (Include this provision only where a PHA is a party to the Contract between the Lessor and HUD.) 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. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Lessor and reviewed by the PHA.

Lessor_____
By_____
Date _____
Lessee_____
Date _____

(c) *Prohibited Provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(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 or 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 Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such 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.)

§ 886.123 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he 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) *Inspection Prior to Occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic Inspections.* HUD will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times as HUD may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner of its determination.

(d) *Units Not Decent, Safe, and Sanitary.* If HUD notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

§ 886.124 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

(a) Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the Owner 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 Owner of the amount of the Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD.

(b) 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. 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.

§ 886.125 Overcrowded and underoccupied units.

If HUD determines that a contract unit assisted under this part is not Decent, Safe, and Sanitary by reason of increase in Family size or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 886.109.

§ 886.126 Adjustment of allowance for utilities and other services.

HUD shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the Owner to make promptly a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payment.

§ 886.127 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 projects operating under section 8 project commitments pursuant to this subpart.

§ 886.128 Evictions.

(a) The Owner shall not evict the 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.

(b) Where a PHA is a party to the Contract between the Owner and HUD, 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 time 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. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Owner and reviewed by the PHA.

§ 886.129 Reduction of number of contract units for failure to lease to eligible families.

(a) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract units leased or available for leasing by Eligible Families, HUD may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Eligible Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(b) At the end of the initial term of the Contract and of each renewal term, HUD may, by notice to the Owner, reduce the number of Contract units to not less than (1) the number of units under lease or available for leasing by Eligible Families at that time, or (2) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(c) HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (a) or (b) of this section if HUD determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract and if contract authority is available; and HUD will take such steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance.

§ 886.130 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

Effective date: This final rule shall be effective on February 24, 1977.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation has been carefully evaluated in accordance with OMB Circular A-107.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-2705 Filed 1-27-77;8:45 am]

federal register

FRIDAY, JANUARY 28, 1977

PART IX

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders, 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

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.

Georgia:		
GA76–1118		Oct. 15, 1976.
Illinois:		
IL76–2122		Oct. 1, 1976
IL76–2123;	IL76–2124; IL 76–2125.	Oct. 8, 1976. Oct. 22, 1976.
Iowa:		
IA76–4148;	IA76–4149	Sept. 10, 1976.
Kentucky:		
KY76–1077		July 23, 1976.
KY76–1086		Aug. 27, 1976.
KY76–1091		Sept. 3, 1976.
Montana:		
MT76–5103		Nov. 19, 1976.
Nevada:		
NV76–5114		Dec. 10, 1976
NV77–5004		Jan. 4, 1977.
Pennsylvania:		
PA76–3163		May 7, 1976
Texas:		
TX76–4115		July 16, 1976
TX76–4127		July 23, 1976.
TX76–4140		Aug. 6, 1976.
Virginia:		
MD76–3285		Nov. 19, 1976.
Washington, D.C.:		
DC76–3284		Do.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:		
AL76–1047	(AL77–1006)	Apr. 9, 1976.
AL76–1117	(AL77–1007)	Oct. 8, 1976.
Georgia:		
GA76–1039	(GA77–1005)	Aug. 27, 1976.
GA76–1120	(GA77–1009)	Oct. 29, 1976.
New Hampshire:		
NH76–2094	(NH77–2003)	July 30, 1976.
NH76–2114	(NH77–2004)	Sept. 17, 1976
Pennsylvania:		
PA76–3158	(PA77–3023)	Apr. 9, 1976
PA76–3247	(PA77–3016)	Sept. 17, 1976.
Texas:		
TX76–4153	(TX77–4008);	Oct. 1, 1976.
TX76–4154	(TX77–4009);	
TX76–4155	(TX77–4010);	
TX76–4156	(TX77–4012).	
TX76–4163	(TX77–4013);	Oct. 8, 1976
TX76–4164	(TX77–4014);	
TX76–4165	(TX77–4015);	
TX76–4166	(TX77–4016).	
TX76–4161	(TX77–4011)	Oct. 15, 1976.
Utah:		
UT76–5097	(UT77–5006)	Nov. 5, 1976.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

General Wage Determination Decision No. PA75–3060, pertaining to Franklin County, Pennsylvania only is cancelled. Agencies with building construction projects pending in this location should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR). Section 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent with 29 CFR 1.7(b)(2), the incorporation of Decision No. PA75–3060 in contract specifications the opening of bids which is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C., this 21st day of January 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

Decision # GA76-1119 - Mod. # 1 (41 FR-45800 - October 15, 1976) Richmond County, Georgia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Elevator constructors	8 52	495	32	4%+a+b	02
Elevator constructors helpers'	5 96	495	32	4%+a+b	02
Elevator constructors helpers' (Probationary)	4 26				
Glaziers	6 15	30	30		
Laborers:					
Unskilled	4 10	15			05
Air tool (jackhammer,vib)	4 25	15			05
Mason tenders	4 25	15			05
Mortar mixers	4 25	15			05
Pipelayers (concrete, clay)	4 25	15			05
Plasterers tenders	4 25	15			05
Lathers	4 30				
Painters:					
Brush & roller	7 10	30	30		
Steel & spray	8 10	30	30		
Plumbers & Steamfitters	9 33	50	45		03

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #IL76-2122 - Mod. #2 (41 FR 43576 - October 1, 1976) Cook County, Illinois					
CHANGE:					
Electricians	$11.25	8 37%	17%+6.93%	.80	.92%
Ironworkers:					
Metal Fence Erector	8 30	50	675		10
Ornamental	10 90	65	675		10
Red Book Fence Erector	8 05	65	675		10
Truck Drivers:					
Building & Residential	-				
2-3 Axle Trucks	9 05	a23 00	a27 00		
4-Axle Trucks	9.20	a23 00	a27 00		
5-Axle Trucks	9 40	a23 00	a27 00		
6-Axle Trucks	9 60	a23 00	a27 00		
Heavy & Highway					
2-3 Axle Trucks	8 55	675	.575		
4-Axle Trucks	8 80	675	575		
5-Axle Trucks	9 00	675	575		
6 Axle Trucks	9 20	675	575		
DECISION #IL76-2123 - Mod. #2 (41 FR 44612 - October 8, 1976) DuPage, Grundy, Kane, Kendall, Lake, McHenry & Will Counties, Illinois					
CHANGE:					
Electricians DuPage County	$11 75	4%	7%	8%	5%
Sheet Metal Workers DuPage Co	11 35	40	.45	20	
Truck Drivers:					
2-3 Axle Trucks	9 05	a23 00	a27 00		
4-Axle Trucks	9.20	a23 00	a27.00		
5-Axle Trucks	9 40	a23 00	a27 00		
6-Axle Trucks	9 60	a23 00	a27 00		

MODIFICATIONS P 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #IL76-2124 - Mod. #1					
(41 FR 44616 - October 8, 1976)					
Ford, Iroquois & Kankakee Counties, Illinois					
CHANGE:					
Truck Drivers:					
Kankakee Co; Northern ½ of Ford Co , & the Remainder of Iroquois County:					
2-3 Axle Trucks	$9 05	a23 00	a27 00		
4-Axle Trucks	9 20	a23 00	a27 00		
5-Axle Trucks	9 40	a23 00	a27 00		
6-Axle Trucks	9,60	a23 00	a27 00		
Power Equipment Operators:					
Ford & Iroquois Counties					
Class I	11 00	40	75		13
Class II	10 95	40	75		13
Class III	10 75	40	75		13
Class IV	7 25	40	75		13
DECISION #IL76-2125 - Mod. #1					
(41 FR 44620 - October 8, 1976)					
Bureau, LaSalle, Livingston, Marshall, Putnam & Woodford Counties, Illinois					
CHANGE:					
Truck Drivers:					
Remainder of Woodford & Livingston Counties:					
2-3 Axle Trucks	$9 05	a23 00	a27 00		
4-Axle Trucks	9 20	a23 00	a27 00		
5-Axle Trucks	9 40	a23 00	a27 00		
6-Axle Trucks	9 60	a23 00	a27 00		

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vac tion	Education and/or Appr Tr
DECISION #IL76-2133 - Mod. #1					
(41 FR 46831 - October 22, 1976)					
Boone, Carroll, DeKalb, JoDaviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Counties, Illinois					
CHANGE:					
Truck Drivers:					
Boone, Stephenson, Winnebago Counties; Carroll (North of Rt #72 & East of Rt #78) Co; JoDaviess (East of Rt. #78 - Except City of Stockton) County:					
2-3 Axle Trucks	$9 00	40	65		
4-Axle Trucks	9 15	40	65		
5-Axle Trucks	9 35	40	65		
6-Axle Trucks	9 55	40	65		
DeKalb County; East of Rt # 51 in Lee & Ogle Counties:					
2-3 Axle Trucks	9 05	a23 00	a27 00		
4-Axle Trucks	9 20	a23 00	a27 00		
5-Axle Trucks	9 40	a23 00	a27 00		
6-Axle Trucks	9 60	a23 00	a27 00		

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
DECISION NO. IA76-4148 - Mod. #2 (41 FR 38719 - Sept 10, 1976) Johnson County (City of Iowa City and abutting municipalities), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction: Carpenters:					
Carpenters; Soft Floor Layers	$8 905	45	45		08
Millwrights	9 305	45	45		08
Piledrivermen	9 255	45	45		08
DECISION NO. IA76-4149 - Mod. #2 (41 FR 38722 - Sept 10, 1976) Linn County, Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction: Carpenters	$8 905	45	45		08
Millwrights	9 305	45	45		08
Piledrivermen	9 255	45	45		08
Soft Floor Layers	8 905	45	45		08

MODIFICATIONS P. 6

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
(Decision # KY76-1077 - Mod. # 4) (41 FR-30525 - July 23, 1976) Warren County, Kentucky					
Change:					
Boilermakers	10 80	.75	1 00		02
Cement masons	8 50	20			01
Elevator constructors	11 00	545	35	4%+a+b	02
Elevator constructors' helpers	70%JR	545	35	4%+a+b	02
Elevator constructors' helpers (prob)	50%JR				
Plasterers	8 50	20			01
Drop: Footnote (a) for Sheet Metal Workers	-				
Decision # KY76-1086 - Mod. # 3 (41 FR-36384 - August 27, 1976) Boone, Campbell, Kenton, and Pendleton Counties, Kentucky					
Change:					
Plumbers & Gas fitters	11 47	75	1 05		05
Soft floor layers	8 70	60	65		05
POWER EQUIPMENT OPERATORS:					
GROUP A	11 11	46	1 00		11
GROUP B	10 95	46	1 00		11
GROUP C	10 59	46	1 00		11
GROUP D	9 81	46	1 00		11
GROUP E	9 48	46	1 00		11
GROUP F	8 03	46	1 00		11

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # KY76-1091 - Mod. # 2					
(41 FR-37470 - September 3 1976)					
Christian County (Ft Campbell only) Kentucky					
Change:					
Boilermakers	10 80	75	1 00		02
Laborers:					
Laborers	5 60	35	35		
Air tool operators, mason tenders mortar mixers, pipelayers (clay & concrete),					
Plasterers tenders'	5 75	35	35		
DECISION NO. MT76-5103 - Mod. #3					
(41 FR 51326 November 19 1976)					
Statewide, Montana					
Change:					
Carpenters:					
Broadwater Lewis & Clark and Jefferson Counties					
Carpenters	$8 27	45	75		02
Piledrivermen	8 42	45	75		02
Millwrights	8 52	45	75		02

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #NV76-5114 - Mod. #3					
(41 FR 54133 - December 10 1976)					
Clark County (excluding the Nevada Test Site) Nevada					
Change:					
Asbestos Workers	$12 11	85	$1 10		
Painters:					
Brush; Roller	11 55	75	35		06
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Tapers	11.90	.75	.35		06
DECISION #NV77-5004 - Mod. #2					
(42 FR 1000 - January 4 1977)					
Statewide (excluding the Nevada Test Site and Tonopah Test Range), Nevada					
Change:					
Asbestos Workers:					
Clark Esmeralda Lincoln, Nye Counties	$12 11	85	$1 10		
Painters:					
Clark, Esmeralda, Lincoln, Nye Counties:					
Brush; Roller	11 55	75	35		06
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Sign; Tapers	11 90	75	35		06
Buffing Steel; Sandblasters; Structural Steel	12 35	75	35		06
Steeplejack	13.15	.75	.35		.06
DECISON #PA76-3163 - Mod. #3					
(41 FR 19020 - May 7, 1976)					
Adams, Berks, Bradford, Carbon, Columbia, Cumberland Dauphin, Juniate, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania					
Change:					
Ironworkers:					
Cumberland & Dauphin Counties	$10 63	84	1 21		03

MODIFICATIONS P. 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #TX76-4115 - Mod. #5 (41 FR 29652 July 16, 1976) Gregg County, Texas					
Change:					
Bricklayers	$ 8 85		35		05
Electricians:					
Electricians	8 30	60	1%		1/4%
Cable splicers	8 70	60	1%		1/4%
DECISION #TX76-4127 - Mod. #2 (41 FR 30491 - July 23, 1976) Smith County, Texas					
Change:					
Electricians	8 30	60	1%		1/4%
DECISION #TX76-4140 - Mod. #4 (41 FR 33184 - August 6, 1976) Bexar County, Texas					
Change:					
Bricklayers & stonemasons	8 57	40	.30	25	05
Electricians:					
Electricians	10 24	30	3%		1%
Cable splicers	10 49	30	3%		1%
Painters:					
Brush; Paperhanger; Taper & floater	7 925		20		05
Spray; structural steel	8 175		20		05
Spray on structural steel; sand blasting	8 425		20		05

MODIFICATIONS P. 10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #MD76-3285 - Mod. # 2 (41 FR 51308 November 19 1976) Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, Virginia; and for WMATA Rapid Rail Transit System Projects Only, Alexandria, Virginia					
Change:					
Plasterers	$10 15	55	65		06
Terrazzo and Mosaic Workers	10 78	50	40		
Tile Setters	10 78	50	40		
Terrazzo Workers Helpers	9 30	50	40		
Tile Setters Helpers	9 30	50	40		
DECISION #DC76-3284 - Mod. # 2 (41 FR 51368 - November 19 1976) Washington, D C					
Change:					
BUILDING AND HEAVY CONSTRUCTION, (INCLUDING WMATA)					
Plasterers	$10 15	55	65		06
Terrazzo Workers and Mosaic Workers	10 78	50	40		
Tile Setters	10 78	50	40		
Terrazzo Workers Helpers	9 30	50	40		
Tile Setters Helpers	9 30	50	40		

STATE: Alabama COUNTY: Madison
DECISION NO : AL77-1006 DATE: Date of Publication
Supersedeas Decision No : AL76-1047 dated April 9 1976 in 41 FR-15238
DESCRIPTION OF WORK: Building construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	8 61	30	30		05
Boilermakers	7 50	40	90		02
Bricklayers	9 40				
Carpenters	7 86				03
Cement masons	8 65				
Electricians: Linemen	9 55	40	1%+ 30		1%
Glaziers	6 00				
Ironworkers:					
Reinforcing	8 405	40	35		03
Structural	8 405	40	35		03
Laborers:					
Laborers, Mason tenders	4 52	20	30		
Air tool op (jackhammer, vibrator), Mortar mixers	4 77	20	30		
Millwrights	8 27				03
Painters:					
Commercial	7 50		25		05
Industrial	8 25		25		05
New Industrial	8 50		25		05
Plasterers	8 90				
Plumbers: Pipefitters	9 45	45	50	25	10
Roofers	4 85				
Sheet metal workers	9 50	55	60		05
Tile setter	9 21				
Tile setter helper	4 75				
Truck drivers	3 67				
POWER EQUIPMENT OPERATORS:					
Group A	8 78	30	30		
Group B	7 44	30	30		
Group C	6 73	30	30		

AL77-1006 - (Cont'd)

POWER EQUIPMENT OPERATORS:
(CONT D)

Group A - Backhoe bulldozers, crane crane car central mixing plant concrete pump, derrick, dragline dredge drill elevating grader finishing machine (concrete), forklift, front end loader gradall, grout pump helicopter pilot, hoist, locomotive engineer mechanic, motor patrol mucking mechanic piledriver post hole digger, scraper (pull type & self prop) shovel sweeper, tractor (spec equip) trenching machine well point & winch truck operators

Group B - Bituminous dist central air comp , concrete mixer (port) fireman floating equip , front end loader, rubber tire ¼ cu yd & under locomotive brakeman, locomotive flagman, locomotive switchman, oiler-driver (35 tons crane & over) outboard motor boat (when used for towing) paving machine, portable hoist Buck hoist type , post hole digger mounted on farm type tractor & walk behind type trenching machine operators

Group C - Air compressor (port) conveyor, fireman stationary equip , mechanic helper, oiler, outboard motor boat & pump operators

Oiler driver - additional $ 10 per hour

All cranes derricks & gantry operators such equipment with an overall height of 150', including jibs; all scrapers operators - additional $ 25 per hour

SUPERSEDEAS DECISION

STATE: Alabama COUNTIES: Jefferson & Shelby
DECISION NUMBER: AL77-1007 DATE: Date of Publication
Supersedeas Decision No : AL76-1117 dated October 8, 1976 in 41 FR-44610
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	9 41	40	30		05
Boilermakers	9 50	75	1.00		02
Bricklayers; pointers; caulkers; stonemasons	9 25	25	25		05
Cleaners	8 15	25	25		05
Carpenters:					
Carpenters, soft floor layers	8 05	45	25		07
Millwrights	9 85				07
Piledrivermen	8 25	45	25		07
Cement masons	7 33	50			
Electricians:					
Electricians	10 10	30	1%+ 40		½%
Cable splicers	10 35	30	1%+.40		½%
Elevator constructors	9 14	495	32	4%+a+b	02
Elevator constructors' helpers	6 40	495	32	4%+a+b	02
Elevator constructors' helpers (prob)	4 905				
Glaziers	8 03	50	50		01
Ironworkers	9 25	60	815		06
Lathers	6 90		10		01
Linemen:					
Linemen	8 88	35	1%		½%
Groundmen under one year	4 21	35	1%		½%
Groundmen one year and over	4 97	35	1%		½%
Hole and ditch digging equipment, tractor with winch and derrick, truck with winch and derrick	7 55	35	1%		½%
Tractor with towing machine truck with winch only	6 22	35	1%		½%
Truck without winch	5 33	35	1%		½%
Marble setters	8.20		40		
Painters:					
Brush (Commercial)	8 25		50		
Spray; Structural steel	8.75		50		
Paperhangers	8 40		50		
Plasterers	7 47	50			
Plumbers; Pipefitters	10 50	40	65		09
Roofers	7 85		20		10
Material handlers	4 12		20		10
Sheet metal workers	9 90	65	70		09
Sprinkler fitters	10 10	60	90		08
Terrazzo workers, Tile setters	8 20		40		
Tile, Marble terrazzo helpers	5 95				

AL77-1007 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck Drivers:					
Up to but not including 1½ tons	5 75	20			
1½ to but not including 3 tons	5 95	20			
3 tons but not including 5 tons	6 20	20			
5 tons and over including special equipment	6 35	20			
Heavy Duty - off the road trucks	6 45	20			
Welders, riggers, rivoters - receive rate prescribed for craft performing operation to which welders, riggers, and rivoters are incidental					

PAID HOLIDAYS:
A-New Year's Day: B-Memorial Day: C-Independence Day; D-Labor Day: E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:
a 6 paid holidays: A through F

b Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years

AL77-1007 - (Cont'd)

BUILDING CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A	6 00	25	30		03
GROUP B	5 95	25	30		03
GROUP C	5 90	25	30		03
GROUP D	5 85	25	30		03
GROUP E	6 25	25	30		03
GROUP F	6 70	25	30		03
GROUP G	6 60	25	30		03
GROUP H	6 65	25	30		03
GROUP I	6 55	25	30		03
GROUP J	6 40	25	30		03

GROUP A
Air or electric tool operators and asphalt rakers

GROUP B
Vibrator operators chain saw ops of mechanical equipment which replaces (wheelbarrows or buggies), power mowers, mortar mixers, pipe layers conc & clay and muckers

GROUP C
Plasterers' tenders and hod carriers

GROUP D
Mason tenders, building laborers and wagon drill operators' helpers

GROUP E
Burners on demolition, wagon drill operators and tunnel laborers

GROUP F
Powderman

GROUP G
Caisson-driller (10' Dia)

GROUP H
Tunnel miner

GROUP I
Pneumatic concrete gun operator and nozzleman

GROUP J
Chuck tender

AL77-1007 - (Cont d)

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A	8 14	30	20		10
GROUP B	7 91	30	20		10
GROUP C	7 14	30	20		10
GROUP D	8 84	30	20		10
GROUP E	8 43	30	20		10
GROUP F	7 27	30	20		10

GROUP A
Asphalt plant, boom tractor, bulldozer, cableways, core driller, compressors (2 or more), crane-derrick-dragline, dinky locomotive, dredges, fork lift, front end loader, gradall, heavy duty mechanic, hoist (1 drum or more), mixers, push tractor, scrapers, shovels, trenching machine (and all similar equipment), winch trucks, motor graders, concrete pump, piledriver, rotary drill

GROUP B
Air compressor (over 125), asphalt spreaders, blade graders (pull type), boat operator, conveyor (2 or more up to 4), crawler tractor, distributors, (bituminous surface), farm tractors, finishing machine, pumps over 4 inches, rollers, welding machine (4 or more)

GROUP C
Air compressor (125 & under), oilers-firemen, conveyor (1) tended by oiler), pumps (under 4 inches), welding machines (3 or under), mechanic helpers

GROUP D
ON STEEL ERECTION: Crane, dragline, derrick, hoist, piledriver; winch truck, fork lift, tower cranes, climbing cranes, cherry picker, mechanics, locomotives, tug boat

GROUP E
Tractors welding machine, gas or diesel driven welding machine (4 or more), air compressors over 125 (2 or less), power generating units (gas or diesel)

GROUP F
Gas or diesel driven welding machine (3 or less), mechanic helper, air compressor 125 and under (2 or less) oiler fireman small boat

SUPERSEDEAS DECISION

STATE: Georgia COUNTIES: Clayton, Fulton & Dekalb
DECISION NUMBER: GA77-1005 DATE: Date of Publication
Superseded Decision No : GA76-1089 dated August 27, 1976 in 41 FR-36378
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	9 35	45	50		05
Boilermakers	9 50	75	1 00		02
Bricklayers:					
Bricklayers & Stonemasons	9 10	55	40		05
Marble masons, terrazzo workers and ceramic tile setters	8 95	55	40		
Carpenters:					
Carpenters, drywall hangers, and resilient floor layers	9 10	40	45		02
Carpet layers	7 15	40	45		02
Millwrights	8 85	45	50		05
Piledrivermen	9 25	40	45		02
Cement masons	8 60	40	55		
Electricians	9 95	8%	1%+8		½ of 1%
Elevator constructors	9 43	545	35	4%+a+b	02
Elevator constructors' helpers	6 60**	545	35	4%+a+b	02
Elevator constructrrs' helpers (probationary)	4 715				
Glaziers	9 00	55	38		105
Ironworkers:					
Structural, ornamental & reinforcing	8 85	55	57		07
Lathers	8 75	40	35		05
Leadburners	7 80	30		c	01
Marble & tile workers' helpers	5 55				
Painters:					
Brush & dry wall finishing	9 10	45	55		04
Spray & sandblasting	10 10	45	55		04
Paperhanging	9 35	45	55		04
Plasterers	8 87	40	55		
Plumbers & steamfitters	9 95	65	50		11
Sheet metal workers	9.40	50	66		06
Sprinkler fitters	10 10	60	90		08
Terrazzo workers' helpers:					
Helpers	5 55				
Terrazzo floor machine operators	5 65				
Terrazzo base machine operator	5 75				
Truck drivers	4 00				
Roofers	6.32				
Welders - Rate for craft					

PAID HOLIDAYS:
A-New Year's; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES
a Holidays: A through F

b Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee whohas worked in business more than 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years

c Holidays: A through F; Washington's Birthday, Good Friday, and Christmas Eve providing employee has worked 45 full days during th 120 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holidays:

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Ed cati n and/or Appr Tr.
GROUP A	6 00	20	25		05
GROUP B	6 12	20	25		05
GROUP C	6 22	20	25		05
GROUP D	6 30	20	25		05
GROUP E	6 50	20	25		05
GROUP F	6 90	20	25		.05
GROUP G	6 75	20	25		05
GROUP H (25¢ above rate for classification under which employed)					

GROUP A: Batch plant men, buggy rollers (Ga.,), cleaners (brick or lumber), clearing of right of way and building site (hand tools), concrete curer-sealer and liquid hardner, conveyer operator (used by tenders of plasterers and bricklayers) electrician laborer, excavator, backfiller grader (hand), forklift operator, walk type tending bricklayers and plasterers, form oiler, form stripper metal pan handler, plumber-laborer, pipe doper, precast slab layer (floors roofs walks, curbs), concrete puddler, rail porter, railroad track laborer reinforcing steel handler scaffolds and staging for masons and plasterers, erecting and removing scarifyer, concrete (mechanical and hand), sheeting and shoring laborers, steam jennies (used in cleaning equipment), tenders (all crafts), truck spotter dumper, winch handler (manual), wrecking buildings and miscellaneous structures

GROUP B: Bucket-dumpman (concrete), mixer-mortar, grout clay, etc, (hand or machine), power post hole digger, power cleaning machine operator, power wheel-barrow, mortar mixer-hose for gypsum roofs, plastering, asbestos fiber sound proofing, etc

GROUP C: Burner-demolition, chain saw operator, power concrete saw operator, steel form setter, sewer pipe layer, yarner, wiper, potman, slip form raiser (steel or wood) jack or screw type

GROUP D: Wagon drill operator (track or wheel type) and like used in drilling for blasting

GROUP E: Powderman-helper

GROUP F: Powderman, nozzleman (concrete pneumatic)

GROUP G: Caisson holeman

GROUP H: Chimney or stacks isolated

GA77-1005 - (Cont d)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A	8 50	50	75		07
GROUP B	8 15	50	75		07
GROUP C	6 48	50	75		07
GROUP D	6 83	50	75		07
GROUP E	5 93	50	75		07
GROUP F	6 28	50	75		07
GROUP G	5 26	50	75		07

GROUP A: Backhoe operators, clamshell operator conc mix operator, cent, mix plant, conc. pump operator-Ridley or similar type crane operator (truck, tower, crawler, or locomotive) derrick operator, dragline operator, drill operator-caisson foundation type, elevating grader operator, forklift operator that comes within the jurisdiction of the Operating Engineers hoisting engine operator, locomotive operator, mechanics-heavy duty, oilers on cranes with earth boring drill attached with a separate power source, concrete paving mixer operator, pile driver operator, rock crusher operator, shovel operator, trenching machine operator over 6 ft depth capacity well point system operator (including the operation of all pumps on project operated by the contractor) generator operator-75 K VA and over tugger hoist operator winch truck operator hoisting material, air compressor operator, 365 C F M and over furnishing air simultaneously for more than one contractor

GROUP B: Bulldozer operator, dozer shovel operator, drill operator-Quarry master type, firemen-stationary or portable motor grader operator, motor scraper operator (pans), pusher dozer operator, self-propelled compactor operator with blade tract or operator with special equipment, trenching machine operator up to and including 6 ft depth capacity

GROUP C: Air compressor operator 600 cu ft and over, air compressor operator batt, of two, 300 cu ft and over, hydrohammer operator, concrete batch plant operator

GROUP D: Oiler-truck or locomotive cranes

GROUP E: Oiler-unspecified pump operator over 4" up to batteries of 4 welding machine operator, batteries of two 300 amps and over

GROUP F: Concrete mixer operator skip types except paving mixers, concrete finishing machine operator, concrete paving machine operator, roller operator well drill operator

GROUP G: Air compressor operator up to and including 300 cu ft or one machine over 300 but less than 600 cu ft conveyor operator, belt type sand blasting machine operator, water pump operator 4" or less. water pump operator over 4" (one only), welding machine operator 300 amps and over

STATE: Georgia COUNTY: Chatham
DECISION NUMBER: GA77-1009 DATE: Date of Publication
Supersedes Decision No : GA76-1120 dated October 29, 1976 in 41 FR-47722
DESCRIPTION OF WORK: Building Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	8 99	45	40		
Boilermakers	9 50	75	1 00		02
Bricklayers:					
Bricklayers & Stonemasons	8 10	20	20		01
Marble masons, terrazzo workers, & tile setters	5 00				
Carpenters:					
Carpenters & soft floor layers	8 15	50			
Millwrights	8 65	50			
Piledrivermen	8 40	50			
Cement masons	7 00				
Electricians:					
Electricians	8 95	50	50+1%		2%
Cable splicers	9 20	50	50+1%		2%
Elevator constructors	8 52	495	32	4%+a+b	02
Elevator constructors' helpers	5 96	495	32	4%+a+b	02
Elevator constructors' helpers (probationary)	4 26				
Glaziers	7 35				
Ironworkers:					
Structural, ornamental, and reinforcing	8 80	55	60		03
Lathers	7 15				
Painters:					
Brush	7 35				
Rollers	7 35				
Tapers	7 60				
Stage work and window jack work	7 85				
Paperhangers	7 60				
Paint burners	7 60				
Spray painting & sandblasting	8 10				
Plasterers	6 50				
Plumbers & pipefitters	9 80	40	55		05
Roofers	5 50				
Sheet metal workers	8 75	45			02
Sprinkler fitters	10 10	60	90		08

GA77-1009 - (Cont'd)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck drivers:					
Pick up and all other trucks up to and including 2½ tons tractor farm type	4 20				
Trucks from 2½ tons up to and including 5 tons All lowboys and other trailers pulled by tractor with rating up to and including 5 tons (except farm type tractors) forklift	4 30				
Truck over 5 tons including all Euclids up toand including 10 tons	4 55				
Euclids over 10 tons	4 60				
Welders - receive rate prescribed for craft performing operation to which welding is incidental					

PAID HOLIDAYS:
A New Years' Day; B-Memorial Day; C Independence Day; E Thanksgiving Day; E-Christmas Day

FOOTNOTES:
a Holidays: A through F

b Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years

GA77-1009 - (Cont d)

BUILDING CONSTRUCTION LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A:					
General laborers	4 50	15	10		05
GROUP B:					
Air tool vibrator operator, operators of jackhammers, tamp, paving breaker, chipper hammer, spade, chain saw, motorized buggies Mason tenders cement mason tenders, terrazzo helpers, railroad or track laborers, walk behind compactor or roller plasterer and carpenter tenders	4 65	15	10		05
GROUP C:					
Motor mixers, (hand or machine) pipelayers	4 75	15	10		05
GROUP D:					
Burner (torch) on demolition work track or wagon drill used in blasting	5 00	15	10		05
GROUP E:					
Powderman or blaster	5 50	15	10		05

GA77-1005 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A	8 50	50	75		07
GROUP B	8 15	50	75		07
GROUP C	6 48	50	75		07
GROUP D	6 83	50	75		07
GROUP E	5 93	50	75		07
GROUP F	6 28	50	75		07
GROUP G	5 26	50	75		07

GROUP A: Backhoe operators, clamshell operator, conc mix operator, cent mix plant, conc. pump operator-Ridley or similar type crane operator (truck, tower, crawler, or locomotive), derrick operator dragline operator, drill operator-caisson foundation type, elevating grader operator, forklift operator that comes within the jurisdiction of the Operating Engineers hoisting engine operator, locomotive operator, mechanics-heavy duty, oilers on cranes with earth boring drill attached with a separate power source, concrete paving mixer operator, pile driver operator, rock crusher operator, shovel operator, trenching machine operator over 6 ft depth capacity, well point system operator (including the operation of all pumps on project operated by the contractor) generator operator-75 K VA and over tugger hoist operator, winch truck operator, hoisting material air compressor operator 365 C F M and over furnishing air simultaneously for more than one contractor

GROUP B: Bulldozer operator dozer shovel operator, drill operator-Quarry master type, firemen-sationary or portable motor grader operator, motor scraper operator (pans), pusher dozer operator, self-propelled compactor operator with blade, tract or operator with special equipment, trenching machine operator up to and including 6 ft depth capacity

GROUP C: Air compressor operator 600 cu ft and over, air compressor operator batt, of two, 300 cu ft and over, hydrohammer operator, concrete batch plant operator

GROUP D: Oiler-truck or locomotive cranes

GROUP E: Oiler-unspecified pump operator over 4 up to batteries of 4 welding machine operator, batteries of two 300 amps and over

GROUP F: Concrete mixer operator skip types except paving mixers concrete finishing machine operator, concrete paving machine operator, roller operator well drill operator

GROUP G: Air compressor operator up to and including 300 cu. ft or one machine over 300 but less than 600 cu ft conveyor operator, belt type, sand blasting machine operator, water pump operator 4 or less water pump operator over 4" (one only) welding machine operator 300 amps and over

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTY: Rockingham
DECISION NO : NH77-2003 DATE: Date of Publication
Supersedes Decision No NH76-2094, dated July 30, 1976 in 41 FR 32165
DESCRIPTION OF WORK: Building Heavy, Highway and Marine Construction

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10 26	80	80		01
BOILERMAKERS	10 00	60	10%		01
BRICKLAYERS, CEMENT MASONS MARBLE MASONS, PLASTERERS, STONEMASONS, TILE SETTERS & TERRAZZO WORKERS	8 19	55	40		01
CARPENTERS:					
Salem:					
Carpenters & Soft Floor Layers	10 20	60	1 00		02
Remainder of County:					
Carpenters & Soft Floor Layers	7 35	55	60		01
Piledrivermen, wharfb & dock builders & millwrights	8 20	55	60		01
ELECTRICIANS:					
Twps, of Exeter, Greenland, Hampton, Hampton Falls Portsmouth, Newington, Newmarket, Northwood, Nottingham, Rye, Seabrook Strathan & S New Market	9 50	50	1%+ 10		02
Kingston, Kensington, N Kingston, Hampstead, Plaintow, Westville, Atkinson N Salem & Salem	10 02	35	1%+.20		02
Remainder of County	10 10	40	1%		03
ELEVATOR CONSTRUCTORS:					
Constructors	10 665	495	32	4%+a+b	02
Helpers	7 465	495	32	4%+a+b	02
Helpers (Prob)	5 33	495	32	4%+a+b	02
GLAZIERS	7 87	52	59		03
IRONWORKERS:					
Structural, Ornamental and Reinforcing	9 70	70	1 00		02
LABORERS, Building:					
Auburn, Candia, Chester, Danville, Deerfield, Deerfield Center, Derry, E Derry, Fremont, Hampstead, Londonderry, Raymond Sandown, W Epping & Windham AND Derrfield:					
Laborers	6 16	60	70		10
Plasterers tenders	6 31	60	70		10

DECISION NO. NH77-2003

LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Drillers, pavement breakers pneumatic tool ops , chipping gun ops , blasters & powdermen	6 66	60	70		10
All other pneumatic tool ops on boiler & stack work	7 06	60	70		10
Pipelayers, fence & guard rail erectors	6 41	60	70		10
Laborers: Heavy and Highway Auburn, Canida, Chester, Danville, Deerfield, Deerfield Center, Derry E Derry Fremont, Hampstead, Londonderry, Raymond Sandown W Epping & Windham:	-				
Laborers & Pipelayers	5.91	50	45		10
Pneumatic tool op , drillers concrete vibrators, & pneumatic breakers	6 41	50	45		10
Blasters & powdermen	6 66	50	45		10
Salem, Heavy & Highway	7 50	50	45		10
Salem, Rockingham Park, Building & Demolition	7 50	50	45		05
Remainder of County:					
Building, heavy & highway	5 91	50	45		10
Pneumatic tool operator, drillers pavement breakers	6 31	50	45		10
Blasters & powdermen	6 31	50	45		10
Plasters' tenders	6 06	50	45		10
LATHERS	9 25	45	55		01
LEAD BURNERS	8 75	30		c	01
LINE CONSTRUCTION:					
Linemen	9 34	65	1%	d	3/8of1%
Equipment Operator	8 74	65	1%	d	3/8of1%
Groundman	6 36	65	1%	d	3/8of1%
Driver Groundman	7 38	65	1%	d	3/8of1%

DECISION NO. NH77-2003

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS:					
Deerfield, Candia, Raymond, Auburn Chester, Dondonderry, Derry & Windham:					
Brush	$ 6 90	25			
Paperhangers	7 15	25			
Spray & Sandblasting	8 40	25			
Open Structural Steel	8 15	25			
Enclosed Structural Steel and Steeplejack	7 90	25			
Salem:					
Brush	9 46	72	85		04
Structural	11 58	72	85		04
Townships of Northwood, Deerfield Gandia, Raymond, Auburn Chester Londonderry Derry & Windham:	—				
Brush	4 70	175			
Open structural steel, work to 25	5 95	175			
Enclosed Steel over 25	5 80	175			
Remainder of County:					
Brush	6 35		25		
Spray	7 35		25		
Structural steel	6 96		25		
Structural steel 45 or more	7 96		25		
Taping & Paperhanging	6 60		25		
PLUMBERS & STEAMFITTERS:					
Plaistow Atkinson Danville					
Hampstead and Kingston	9 90	1 35	52		05
Salem and Windham	10 24	73	65		05
Remainder of County	9 90	53	55		02
ROOFERS	6 65				
Roofers Helpers	5 80				
SHEET METAL WORKERS	8 92	45	3%+ 35		02
SPRINKLER FITTERS	10 21	60	90		08
Welders receive -rate prescribed for which craft performing operation to which welding is incidental					

DECISION NO. NH77-2003

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 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacaion Pay credit

b Holidays: A through F

c Holidays: A through F; plus Washington's Birthday, Christmas Eve and Good Friday (providing employee has worked at least 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holidays

d Holidays: B through F provided, the employee has been employed 5 working days prior to the holiday and provided the employee works the day immediately preceding and following the holiday

e $ 25 contribution ot annuity fund

BUILDING CONSTRUCTION
POWER EQUIPMENT OPERATORS

NH 3-PEO-O

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 9 74	1 10	80	a	02
CLASS 2	9 62	1 10	80	a	02
CLASS 3	8 93	1 10	80	a	02
CLASS 4	8 19	1 10	80	a	02
CLASS 5	7 67	1 10	80	a	02
CLASS 6	7 26	1 10	80	a	02

Boom lengths including jib over 150' add $ 55; over 185' add $ 90; over 210' add $1.25; over 250' add $1 90; over 295' add $2 65

CLASS 1 - Shovels,cranes, truck cranes, cherry pickers, dragline, trench hoe, backhoe, 3 drum machine, derricks, pile, elevator tower, hoist gradall, shovel dozer (except when pushing), front end loader (except when pushing) fork lift auger, boring machine, rotary drill, post hole hammer, post hole digger, pumperete machine
CLASS 2 - Sonic or vibratory hammer grader, scraper more than 21 yds struck, tahdem scraper, concrete pump, bulldozer, scraper 21 yds struck or less, portable steam boiler, portable steam generator, roller, spreader, tamper, asphalt paver, Mechanics, Maintenance
CLASS 3 - Assistant engineers (firemen)
CLASS 4 - Pumps (1-3 grouped), compressor, welding machine (1-3 grouped), generator, concrete vibrator, lighting plant, heater (power driven 1-5), wellpoint system (operating & installing), syphons-pulsometers, cone mixers, valves controlling permanent plant air or steam conveyor, Jackson type tamper cranes & gradalls.
CLASS 5 - Oilers on truck cranes & gradalls
CLASS 6 - Oilers (other than truck cranes & gradalls

FOOTNOTE: a 10 paid holidays; New Year's Day; Memorial Day, Independence day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Fast Day, Columbus Day, and Armistice Day

DECISION NO. NH77-2003

HEAVY & HIGHWAYCONSTRUCTION
POWER EQUIPMENT OPERATORS

NH 5-PEO-4-F

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 8 93	1 10	80	a	02
CLASS 2	9 48	1 10	80	a	02
CLASS 3	8 81	1 10	80	a	02
CLASS 4	7 745	1 10	80	a	02
CLASS 5	8 31	1 10	80	a	02
CLASS 6	7 01	1 10	80	a	02
CLASS 7	7 07	1 10	80	a	02

Boom length including jib: over 150' - additional $.25 per hour; over 185' additional $ 5o per hour; over 220' - additional $ 75 per hour; over 275' additional $1 00 per hour; over 295' additional $2 00 per hour

CLASS - Power shovels, cranes, truck cranes, derrick, pile drivers trenching machines, mechanical hoist, pavement breakers, cement concrete pavers draglines, hoisting engines, three drum machines, pumperete machines elevating graders, shovel dozers, (when used for digging or loading), front end loaders (when used for digging or loading), mucking machines (when used as in shafts and tunnels), shaft hoists,steam engineers, backhoes, gradalls and cableways
CLASS 2 - Master Mechanics
Class 3 - Grader, scrapers, more than 21 yds , struck andtandem scrapers, bulldozer, scrapers, 21 yds , struck or less, grout pumps, portable steam boilers, roller spreaders asphalt pavers, locomotive and tampers, self-propelled or tractor-drawn, Mechanics, maintenance.
CLASS 4 - Pumps (n) (1-3 grouped) compressors welding machine (n) (1-3 grouped) generators, lighting plants, heaters (power driven (105), syphons, pulsometers, concrete mixers, valves controlling permanent plant air or steam, conveyors, wellpoint systems (operating and installing)
CLASS 5 - Assistant engineers (Firemen)
CLASS 6 - Oilers (other than true cranes and gradalls)
CLASS 7 - Oilers on truck cranes and gradalls

PAID HOLIDAYS: A-NewYear's Day; B Memorial Day; D-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays A through F; Washington's Birthday; Columbs Day; Veterans' Day; Fast Day

DECISION NO. NH77-2003

NH 5-PEO-4-F 1 of 1

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 6 335	.275	30	a	02
CLASS 2	6 285	275	30	a	02
CLASS 3	6 215	275	30	a	02
CLASS 4	5 965	275	30	a	02
CLASS 5	5 755	275	30	a	02
CLASS 6	5 23	275	30	a	02
CLASS 7	4 555	275	30	a	02
CLASS 8	5 18	275	30	a	02
CLASS 9	4 605	275	30	a	02

Booms over 150' including jib-additional $ 25 per hour
Booms over 185 including jib-additional $ 50 per hour
Booms 220' including jib-additional $ 75 per hour
Booms over 275' including jib-additional $1 00 per hour

CLASS 1 - Power shovel crane truck crane, derrick, cherry picker pile driver, 2 or more drum machine lightner derrick boat, trenching machine, mechanical hoist pavement breaker cement concrete paver dragline, hoisting engine, pumpcrete machine elevating grader shovel dozer (except when pushing front end loader (except when pushing) backhoe, gradall cableway boring machine rotary drill post hole hammer post hole digger, for lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader scraper (over 21 yds struck) tandem scraper concrete pump Bulldozer scraper (21 yds struck or less)
CLASS 4 - Portable steam boiler, portable steam generator, roller tractor mechanic (maintenance), concrete mixer with side loader
CLASS 5 - Assistant engineer (fireman)
CLASS 6 - Pump, compressor welding machine heater (power driven), valve controlling pernament plant (air or steam), wellpoint system auger (powered by independent engine and attached to pile driver) hydraulic saw, generator lighting plant syphon pulsometer, concrete mixer
CLASS 7 - Oiler (other than truck crane and gradall)
CLASS 8 - Oiler on scow
CLASS 9 - Oiler on truck crane and gradall

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year s Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays: A through F; Washington s Birthday Patriot s Day Columbus Day; & Veteran s Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays

DECISION NO. NH77-2003

NH 1-TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$4 41	30	25	a	
CLASS 2	4 64	30	25	a	
CLASS 3	4 87	30	25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday Veteran s Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday)

STATE: New Hampshire COUNTY: Strafford
DECISION NO : NH77-2004 DATE: Date of Publication
Supersedes Decision No NH76-2114 dated September 17 1976, in 41 FR 40399
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories) heavy, highway and Marine Construction

BUILDING, HEAVY & HIGHWAY CONSTRUCION

9-NH-1-2-3-E 1 of 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$10 26	80	.80		01
BOILERMAKERS	10 00	60	10%		01
BRICKLAYERS, Cement masons, Marble setters Plasterers, Stone masons, Terrazzo workers and Tile setters	8 19	55	40		01
CARPENTERS & SOFT FLOOR LAYERS	7 35	55	60		01
ELECTRICIANS	9 50	60	1%+ 50		02
ELEVATOR CONSTRUCTORS:					
Constructors	10 665	495	32	4%+a+b	02
Helpers	7 465	495	32	4%+a+b	02
Helpers (Prob)	5 33	495	32	4%+a+b	02
GLAZIERS	7 87	52	59		03
IRONWORKERS:					
Structural, Ornamental & Reinforcing	9 70	70	1 00		02
LABORERS:					
Laborers	6 16	60	70		10
Plasterers Tenders	6 31	60	70		10
Boilers, stack work, Pneumatic tool op , drillers, pavement breakers, electric chipping ops , blasters & Powdermen, Creosote work	6 66	60	70		10
Pipelayers, fence & guardrail erectors	6 41	60	70		10
Pneumatic tools on boiler & Stack work	7 06	60	70		10
LEADBURNERS	9 25	35		c	.01
LINE CONSTRUCTION: Lineman	9 34	65	1%	d	3/8of1%
Equipment Operator	8 74	65	1%	d	3/8of1%
Groundman	6.36	65	1%	d	3/8of1%
Driver Groundman	7.38	65	1%	d	3/8of1%
PAINTERS: Brush	6 35		25		
Spray and Tender	7 35		25		
Structural Steel	6 96	25			
Structural Steel (45 ft or more)	6 90		25		
Taping & Paperhanging	6 60		25		
PILEDRIVERMEN & MILLWRIGHTS	8 05	55	50		01
PLUMBERS & STEAMFITTERS	9 90	53	55		02
ROOFERS	6 65				
Roofers' Helpers	5 80				
SHEET METAL WORKERS	8 92	45	3%+ 35		02
SPRINKLER FITTERS	10 21	60	90		08

DECISION NO. NH77-2004

Welders - Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independnece Day; D-Labor Day; D-E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a Employer contributes 4% basoc hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit

b Holidays: A through F

c Holidays: a through F; Washington's Birthday Good Friday and Christmas Eve providing employee has worked at least 45 fulls days during the 120 caldendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday

d Holiday; B through F provided employee has beene mployed 5 working days prior to the holiday and provided employee works the scheduled work days immediately preceding and following the holidays.

DECISION NO. NH77-2004

BUILDING CONSTRUCTION
POWER EQUIPMENT OPERATORS

NH 3-PEO-O

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 9 74	1 10	80	a	02
CLASS 2	9 62	1 10	80	a	02
CLASS 3	8 93	1 10	80	a	02
CLASS 4	8 19	1 10	80	a	02
CLASS 5	7 67	1 10	80	a	02
CLASS 6	7 26	1 10	80	a	02

Boom lengths including jib over 150' add $.55; over 185' add $ 90; over 210' add $1 25; over 250 add $1 90; over 295' add $2 65.

CLASS 1 - Shovels,cranes truck-cranes cherry pickers, dragline, trench hoe, backhoe 3 drum machine, derricks, pile, elevator tower hoist, gradall, shovel dozer (except when pushing), front end loader (except when pushing), fork lift auger boring machine rotary drill post hole hammer post hole digger, pumpcrete machine

CLASS 2 - Sonic or vibratory hammer grader, scraper more than 21 yds struck tahdem scraper concrete pump bulldozer scraper 21 yds struck or less portable steam boiler portable steam generator, roller spreader, tamper, asphalt paver Mechanics Maintenance

CLASS 3 - Assistant engineers (firemen)

CLASS 4 - Pumps (1-3 grouped) compressor, welding machine (1-3 grouped) generator concrete vibrator, lighting plant heater (power driven 1-5) wellpoint system (operating & installing), syphons-pulsometers conc mixers, valves controlling permanent plant air or steam conveyor, Jackson type tamper cranes & gradalls

CLASS 5 - Oilers on truck cranes & gradalls

CLASS 6 - Oilers (other than truck cranes & gradalls

FOOTNOTE: A 10 paid holidays; New Year s Day; Memorial Day Independence day, Labor Day Thanksgiving Day Christmas Day Washington s Birthday Past Day, Columbus Day and Armistice Day

DECISION NO NH77-2004

PEO-2-3

HEAVY & HIGHWAY CONSTRUCTION
POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 8 93	1 10	80	a	02
CLASS 2	9 48	1 10	80	a	02
CLASS 3	8 81	1 10	80	a	02
CLASS 4	7 745	1 10	80	a	02
CLASS 5	8 31	1 10	80	a	02
CLASS 6	7 01	1 10	80	a	02
CLASS 7	7 07	1 10	80	a	02

Boom length including jib: over 150' - additional $.25 per hour; over 185' additional $ 5o per hour; over 220 - additional $ 75 per hour; over 275' additional $1 00 per hour; over 295' additional $2 00 per hour

CLASS - Power shovels, cranes truck cranes derrick pile drivers trenching machines mechanical hoist, pavement breakers, cement concrete pavers draglines hoisting engines, three drum machines pumpcrete machines elevating graders shovel dozers (when used for digging or loading), front end loaders (when used for digging or loading) mucking machines (when used as in shafts and tunnels) shaft hoists steam engineers backhoes gradalls and cableways

CLASS 2 - Master Mechanics

Class 3 - Grader, scrapers, more than 21 yds , struck andtandem scrapers, bulldozer scrapers 21 yds struck or less, grout pumps, portable steam boilers, roller, spreaders asphalt pavers locomotive and tampers self-propelled or tractor-drawn Mechanics maintenance

CLASS 4 - Pumps (s) (1-3 grouped) compressors welding machine (s) (1-3 grouped) generators, lighting plants heaters (power driven (105) syphons pulsometers concrete mixers valves controlling pernament plant air or steam, conveyors wellpoint systems (operating and installing)

CLASS 5 - Assistant engineers (Firemen)

CLASS 6 - Oilers (other than truc cranes and gradalls)

CLASS 7 - Oilers on truck cranes and gradalls

PAID HOLIDAYS: A-NewYear s Day; B-Memorial Day; D-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays A through F; Washington s Birthday; Columbs Day; Veterans' Day; Fast Day

DECISION NO. NH77-2004

NH 5-PEO-4-F

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$ 6 335	275	30	a	02
CLASS 2	6 285	275	30	a	02
CLASS 3	6 215	275	30	a	02
CLASS 4	5 965	275	30	a	02
CLASS 5	5 755	275	30	a	02
CLASS 6	5 23	275	30	a	02
CLASS 7	4 555	275	30	a	02
CLASS 8	5 18	275	30	a	02
CLASS 9	4 605	275	30	a	02

Booms over 150' including jib-additional $ 25 per hour
Booms over 185 including jib-additional $ 50 per hour
Booms 220' including jib-additional $ 75 per hour
Booms over 275 including jib-additional $1 00 per hour

CLASS 1 - Power shovel crane truck crane derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat trenching machine, mechanical hoist, pavement breaker cement concrete paver, dragline, hoisting engine, pumperete machine elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds struck or less)
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader
CLASS 5 - Assistant engineer (fireman)
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernanent plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer
CLASS 7 - Oiler (other than truck crane and gradall)
CLASS 8 - Oiler on scow
CLASS 9 - Oiler on truck crane and gradall

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays

DECISION NO. NH77-2004

NH 1TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS 1	$4.71	.55	.25	a	
CLASS 2	4 94	55	25	a	
CLASS 3	5 17	55	25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a Holidays: A through F, plus Washington s Birthday, Veteran s Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday)

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Bucks, Chester Delaware Montgomery & Philadelphia

DECISION NO : PA77-3016

DATE: Date of Publication

Supersedes Decision No : PA76-3247 dated September 17 1976 in 41 FR 40409

DESCRIPTION OF WORK: Building Construction, including single family homes and gardent type apartments up to & including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS					
ZONE 1	$11 72	70	75		06
ZONE 2	11 10	70	75		025

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester Delaware Montgomery Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durham, Lower Makefield, Middletown Falls Morristown New Hope, Newton Noxkamixon Plumstead Riegelsville, Solebury Tullytown Tinicum, Upper Makefield and Yardley Townships in Bucks County

BOILERMAKER	12 05	75	1 00		02
BRICKLAYERS					
ZONE 1	10 38	1 05	1 00		01
ZONE 2	10 46	62	1.50		01
ZONE 3	10 56	1 07	.85		02

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks Chester Philadelphia Counties Radnor and Haverford Township in Delaware County Lower Marion Abington Upper Moreland and Cheltenham Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

CARPENTERS	9 77	1 88	1 30		12
CEMENT MASONS					
ZONE 1	10 00	1 19	1 25		
ZONE 2	8 70	58	.42		
ZONE 3	9 69		.50		

DECISION NO PA77-3016

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford Kenneth Square Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DRYWALL FINISHERS	9 75	94	75	85	03
ELECTRICIANS					
ZONE 1					
Commercial	12 11	6%	5%		2%
Residential up to and including 4 stories	11 32	6%	5%		2%
ZONE 2					
Commercial	12 20	4 4%	1%+2 6%		1 5%
Residential up to and including 3 stories	10 57	3 4%	1%+2 6%		1 5%
ZONE 3					
Comercial	12 34	4 4%	1%+3%		1/2 of 1%
Residential up to and including 3 stories	8 725	4 4%	1%+3%		1/2 of 1%
ZONE 4					
Commercial	10 64	9½%	7%		1/4 of 1%
ZONE 5					
Commercial	10 49	73	1%		03
ZONE 6					
Commercial	11 00	6%	1%+ 50		02
ZONE 7					
Commercial	10 60	35	1%+ 40		02
ZONE 8					
Commercial	12 80	6%	1%+ 40		13

DECISION NO PA77-3016

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U S Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along ROute 152 to the Humeville Road east on Humeville Road to Route 344 north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113 north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope The Borough of New Hope is excluded.

starting at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U S Highway 611 south on 611 to the spur of Route 270 northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U S Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough southwest onNorth Lane to Schuylkill River and continuing southeast in a line to the SPring Mill Road and southwest on the Spring Mill Road to Delaware County

DECISION NO PA77-3016

Philadelphia County - In its entirety

ZONE 2

Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U S Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U S Highway 30

Delaware County - That portion of Radnor Township north of U S Highway 30 and west of State Highway 320

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U S Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and BLue Bell Pikes to Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike, southwest on the Butler Pike,to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

DECISION NO : PA77-3016

Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street to High Street east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Neehive Road to the Township Line at Mervine Street in the State of Pennsylvania

ZONE 3

Chester County - That portion south of U S Highway 30 and north and west of U S Highway 1

Delaware County - That portion south of U S Highway 30 and north of that part of U S Highway 1 between U S Highway 202 and the Chester County Line and east of that part of U S Highway 202 between U S Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania

ZONE 4

Chester County - Oxford Avondale and Kenneth Square Twps

ZONE 5

Chester County - West Clan West Brandywine Honey Brook Wallace West Nantmeal, East Nantmeal Warwick, South Coventry Valley Twps and Coatesville

DECISION NO : PA77-3016

Montgomery County - West Pottsgrove Upper Pottsgrove Douglas Twps Pottstown

ZONE 6

Bucks County - Plumstead Bedminister Tinicum Nockomixon, Bridgeton and Durham Townships in their entireties and that portion of Haycock and Springfield Townships east of a line following State Highway 412 from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068 and along 09068 to State Highway 313 Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7

Bucks County - East Rock Hill, West Rock Hill Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships West of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212 along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8

Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U S Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152 north along Route 152 to the Hulmevilla Rd east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152 north on 152 to TR 532 north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060 West on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope The Boroughs of New Hope and Bristoe are included.

DECISION NO : PA77-3016	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ELEVATOR CONSTRUCTORS					
Elevator Constructors	12 09	545	35	4%+a+b	02
Elevator Constructors Helpers	8 46	545	35	4%+a+b	02
Elevator Constructors Helpers (Prob)	6 045				
GLAZIERS					
ZONE 1	10 08	45	25		.01
ZONE 2	8 89	40	30		01

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties - -

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Durham, Springfield, Richlandtown, Sqoherton Nockamixon Townships in Bucks County Warwick S Coventry, E Coventry, N Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton Greenland, Upper Hanover, New Hanover, Douglas, Marlboro Twps in Montgomery County

IRONWORKERS					
ZONE 1	10 36	79	1 11		05
ZONE 2	10 53	79	1 11		05
ZONE 3					
Structural & Ornamental	11 67	84	1 21		04
Reinforcing	11 42	84	1 46		01

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Bucks County

ZONE 2 - Chester County

ZONE 3 - Delaware, Montgomery and Philadelphia Counties

DECISION NO PA77-3016	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS					
CLASS I	7 95	90	65		
CLASS II	8 05	90	65		
CLASS III	8 10	90	65		
CLASS IV	8.25	90	65		
CLASS V	8.35	90	65		
CLASS VI	7.89	.90	65		

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concrete form work, loading, carrying 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools building scaffolds, raking, shoveling 7 tamping of asphalt spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard workers

LANDSCAPE LABORERS				
CLASS I	6 60	95	65	c
CLASS II	7.10	95	65	c

CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man, and mulcher nozzle man

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LATHERS					
ZONE 1	8 61	225	10		
ZONE 2	9.15	50	15		01
ZONE 3	7 69	40	25		
ZONE 4	7 75	25	25		02

AREAS COVERED BY LATHERS ZONES

ZONE 1 - Delaware Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford Trumbersville, Richland, Quakertown Springfield Durham Riegelsville, Bridgetown, Nockamixon, Tinicum Plumstead Dublin Bedminister, Haycock East Rockhill Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury New Hope, Upper Makefield Wrightstown Newton Yardley Lower Makefield Morrisville, Falls Tullytown Townships in Bucks County

LEAD BURNERS	10 75	40	25	d	01
LINE CONSTRUCTION					
Linemen	13 04	35	1%		1%
Groundmen	7 80	35	1%		1%
WINch truck operator	9 11	35	1%		1%
MARBLE SETTERS	9 75	87	90		
MILLWRIGHTS	10 27	1 88	1 30		12
PAINTERS					
ZONE 1					
Brush	9.295	825	40	40	06
SPray steel & swing	9 545	825	40	40	06
Roller	9 295	825	40	40	06
ZONE 2					
Commercial brush	9 05	65	50		
Commercial spray	9 40	65	50		
ZONE 3					
Brush	8 40	60	45		
Steel and spray	9 45	60	45		
Roller	8 40	60	45		
ZONE 4					
Brush	9 64	55	60	75	
Steel	10 39	55	60	75	

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AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Randnor Haverford Newton Maple Springfield Upper Darby Barby, Ridley, Tinicum & Yeodon Townships in Delaware County Cheltenahm Abington, Upper and Lower Moreland Springfield Whitemarsh, Plymouth Upper Dubling, Horsham Whitpain, Upper and Lower Gwynodd Lower Marion Upper Southampton Lower Southampton Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delaware County

ZONE 3 - Pottstown, Pottsgrove New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
PILEDRIVERMEN	10 42	1 88	1 30		12
POINTERS, CAULKERS AND CLEANERS	9 25	45	50		
PLASTERERS					
ZONE 1	9 47	53			01
ZONE 2	9 71		53		01
ZONE 3	8 97	65			01
ZONE 4	9 45				01

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks & Philadelphia Counties; Remainder of Chester County Remainder of Montgomery County

ZONE 2 - Pennsburg Township in Montgomery County

ZONE 3 - Longwood Kennett Square Avondale and Oxford Townships in Chester County

ZONE 4 - Delaware County

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
PLUMBERS					
ZONE 1	11 96	57	1 00		12
ZONE 2	8 50	485	82		035
ZONE 3	10 02	57	92		08

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County: Tedyffrin E Whiteland, W Whiteland Easttown, Willistown E Goshen, W Goshen, W Chester, E Bradford Westtown, Birmingham, Twps & Thornbury City Townships in Chester County Lower Marion, Horsham, Upper Dublin, Moreland Lower Moreland Abington, Springfield and Cheltenham Townships in Montgomery County

ZONE 2 - Remainder of Chester & Montgomery County

ZONE 3 - Milford, Trumbaversville, West Rockhill, Sellerville, Perkasie, East Rockhill, Richland, Quackertown, Haycock Nockamixon Bridgeton Durham, Riegelsville Townships in Bucks County

ROOFERS				
ZONE 1				
Commercial				
Composition, damp & water-Proofers	11 36	1 20	82	a
Roofers Assistant	5 20	1 55	82	a
Slate, tile and asbestos	10 75	1 00	50	
Asphalt shingle	8 91	1 00	50	
ZONE 2				
Commercial				
Composition & slate	8 35	25	25	
Helpers	4 63	25	25	
ZONE 3				
Commercial				
Composition roofers	9 70	40	50	
ZONE 4				
Commercial				
Composition, damp & water-proofing	10 60	45	25	f
Slate, tile & asbestos	11 15	45	25	f
Precast slab	11 40	45	25	f
ZONE 5				
Residential reroofers	8 82	65	60	
Residential Reroofers Helpers	3 75	65		

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AREA COVERED BY ROOFERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Milford, Trumbbaversville Richland Quakertown Springfield Durham Reiglivile Townships in Bucks County

ZONE 3 - Solesbury, New Hope, Upper Makefield Wrightstown, Newton Yardley, Lower Makefield, Morrisville, Falls, Tullytown and Bistol Townships in Bucks County

ZONE 4 - Parksbury Township in Chester County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
SHEET METAL WORKERS					
ZONE 1 (Commercial)	11 84	1 01	65		03
ZONE 2 (Residential)	7 15				

AREA COVERED BY SHEET METAL WORKERS ZONES

ZONE 1 - Bucks, Chester, Delaware, Montgomery & Philadelphia Counties

ZONE 2 - Chester, Delaware, Montgomery Counties and Bucks County excluding the Townships of Falls, Buckingham Newton, Upper and Lower Makefield Solebury, Plumstead and Wrightstown

SOFT FLOOR LAYERS	8 58	1 58	1 30		12
SPRINKLER FITTERS					
ZONE 1	11 61	60	90		08
ZONE 2	12 04	60	90		10

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AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks Chester Delaware & Montgomery Counties

ZONE 2 - Philadelphia County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
STEAMFITTERS					
ZONE 1	11 41	67	1 45		11

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Bucks, Delaware Philadelphia Counties and Remainder of Montgomery County

STONE MASONS					
ZONE 1	9 20	87	90		
ZONE 2	10 51	67	60		01
ZONE 3	10 75	95	78		01
ZONE 4	9 30	77	75		

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
TERRAZZO WORKERS	9 42	87	90		
TILE SETTERS	9 25	1 10	90		13
WELDERS - rate prescribed for craft performing operation to which welding is incidental					

Paid Holidays (Where Applicable):
A-New Year's Day; B- Memorial Day; C- Indepedence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

Footnotes:

a Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit

b Paid Holidays; A through F

c Paid Holidays: July 4th; Labor Day and Thanksgiving Day

d Paid Holidays A through F Washington s Birthday Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday and is available for work the day preceding and following the holiday

e Paid Holidays: Election Day

f Paid Holidays: Labor Day and Election Day

POWER EQUIPMENT OPERATORS					
CLASS I	11 91	5 5%	9 5%	a	1 2%
CLASS II	11 65	5 5%	9 5%	a	1 2%
CLASS III	10 78	5 5%	9 5%	a	1 2%
CLASS IV	10 57	5 5%	9 5%	a	1 2%
CLASS V	10 26	5 5%	9 5%	a	1 2%
CLASS VI	10 09	5 5%	9 5%	a	1 2%
CLASS VII	9 58	5 5%	9 5%	a	1 2%
CLASS VIII	8 84	5 5%	9 5%	a	1 2%

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CLASSIFICATIONS DEFINITIONS

CLASS I - Handling steel and stone in connection with erection; cranes doing hook work; any machines handling machinery; cable spinning machines; Helicopters; machines similar to the above

CLASS II - Engineers working with dock builders and pile drivers, all types of cranes, all types of backhoes; cableways; draglines; keystones, all types of shovels; derricks; trench shovels; trenching machines; pippin type backhoes; hoist with two towers; pavers 21E and over; all types overhear cranes; building hoists - double drum (unless used as single drum); mucking machines in tunnel; gradalls; front-end loaders over 3 cu yd , boat captain; tandem scraper; tower type crane operation erecting, dismantling, jumping or jacking; drill self-contained (drillmaster type); fork lift (20 ft and over), mortar patrols (fine grade), batch plant with mixer: Machines similar to the above

CLASS III - Conveyors (except building conveyors), building hoists (single drum), scrapers and tournapulls asphalt plant engineers, roller (high grade finishing); caterpillar-type tractors with frontend overhead loaders and rubbertired loaders 2 c y up to & including 3 c y , maintenance engineers with tools; spreaders, high or low pressure boilers, concrete pumps, well drillers, forklift trucks of all types; bulldozers D-7 or equivalent and over; ditch witch type trencher, motor patrol; machines similar to the above

CLASS IV - Concrete breaking machines, rollers and machines similar to the above

CLASS V - All bulldozers under D-7, tractors including rubber-tired type with front and overhead loaders under 2 c y seaman pulverizing mixer, welders and maintenance engineers, fireman on power equipment, maintenance engineer (Power boat), and machines similar to the above

CLASS VI - Conveyors (building), welding machines, heaters, wellpoints, compressors, farm tractors, form line graders, road finishing machines, pumps, power broom (self contained), seed spreader and machines similar to the above

CLASS VII - Fireman

CLASS VIII - Oilers and deck hand (personnel boats)

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FOOTNOTE:
a Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day providing the employee works the day before and after the holiday

		Basic Hourly Rates	Fringe Benefits Payments			
			H&W	Pensions	Vacation	Education and/or Appr Tr
TRUCK DRIVERS						
CLASS I		7 92	6425	625	a+b	
CLASS II	--	8 02	6425	625	a+b	
CLASS III		8 22	6425	625	a+b	

CLASSIFICATIONS DEFINITIONS

CLASS I - Warehouseman checker, fork lift driver, stake body truck (single axle) 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks tandem and batch trucks semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors farm tractor when used for transportation, stake body truck (tandem)

CLASS III - Euclid type, off-highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

FOOTNOTES:
a Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) per calendar year During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years or more senority shall be eligible for two (2) weeks of vacation

b Paid Holidays: Memorial Day; Independence Day; Labor Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Vanango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter

DECISION No : PA77-3023 DATE: Date of Publication

Supersedes Decision No PA76-3158 dated April 9, 1976 in 41 FR 15315

DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CARPENTERS					
ZONE 1	$10 13	8%	7%		
ZONE 2	9 80	8%	7%		
CARPENTER - WELDER					
ZONE 1	10 48	8%	7%		
ZONE 2	10 15	8%	7%		

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Erie, Fayette, Greene, Lawrence, Mercer, Washington and Westmoreland

ZONE 2 - Bedford, Blair, Cambria, Cameron, Centre, Clarion, Clinton, Clearfield, Crawford, Elk, Forest, Franklin, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Somerset, Venango and Warren

CEMENT MASONS	9 55	57	1.53		
PILEDRIVERMEN	10.60	5%	10%		
IRONWORKERS	7 71	785	905		01

	Basic Hourly Rates ZONE 1	BASIC HOURLY RATE ZONE 2	BASIC HOURLY RATE ZONE 3	FRINGES BENEFITS H&W	FRINGES BENEFITS PEN
LABORERS					
CLASS 1	$ 7 71	7 56	7 44	60	60
CLASS 2	7 90	7 78	7 66	60	60
CLASS 3	8 21	8 09	7 95	60	60
CLASS 4	8 33	8 21	8 09	60	60
CLASS 5	8 40	8 40	8 40	60	60
CLASS 6	9 55	9 55	9 55	60	60
CLASS 7	7 71	7 54	7 42	60	60
CLASS 8	7.95	7 78	7 66	60	60
CLASS 9	8 21	8 09	7 95	60	60
CLASS 10	8 33	8 21	8 09	60	60
CLASS 10	8 40	8 40	8 40	60	60

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AREA COVERED BY LABORERS ZONES

ZONE 1 - Allegheny, Beaver, Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence and Somerset

ZONE 2 - Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango and Warren

ZONE 3 - Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin and Potter

CLASSIFICATION DEFINITIONS FOR ALL ZONES

CLASS 1 - Construction Laborer (including tenders handling Salamanders, L P gas heaters or similar etc), Air or electric Impactor Wrench, Air Tamper Operator, Asphalt Tampers, Batcherman (weigh), Blaster's Helper, Blower Man (bulk cement), Brakeman, Coffer Dam, Concrete Pitman, Puddler including Vibrator Operator, Drill Runner's Helper (includes drill mounted on truck, track or similar and Davey drills (spots clean-up and helps to maintain), Fence Construction, Form Stripper and Mover, Hydro-jet Blaster Nozzlemen, Manually moved Emulsion Sprayer, Radio actuated traffic control operator (non-automatic), Rip Rap work, Scaffolds and runways (as per agreement of record), Sheaters and Shorers, Structural Concrete Top Surfacer, Walk Behind Street Sweeper, Welder's Helper (pipeline), Wood Chipper

CLASS 2 Asphalt, Batch and Concrete Plant Operator (mannually operated), Asphalt Rakers, Burner, Caisson Men (open Air), Carryable Pumps, Chain Saw Operator, Chipping Hammer or similar (air or otherwisw), Combination Tamper and Vibrator, Concrete Buster (paving breaker), Cribbing (concrete or steel), Curb Machine Operator (asphalt and concrete) (walk behind), Earth Drill, Fork Lift (walk behind), Form Setter (road forms line man), Handyman, Highway Slab Reinforcement Placers (including joint and basket setter), Hydraulic Pipe Pusher, Jack Hammer Operator, Liner Plates (tile or vitrified clay), Manually operated Diamond Head Core Drill, Mechanical Joint Sealer, Dope Pot, and Tar Kettle, Mortar Mixer (hand or machine), Pin Drivers or Puller (power-highway), Pipe Layers, Plant set up, Maintenance Men, Portable single unit Conveyor, Post Hole Auger (2 or 4 cycle) (hand operated), Power Fence Operator, Power Wheelbarrows and Buggies, Rail Porter or similar, Screed Operator, Signal Man, Whacker, All Railroad Track Work: Adzing Machine, Ballast Router, Bolting Machine, Power Jacks, Rail Drills, Railroad Brakemen, Rail Saws, Spike Drivers, Spike Pullers, Tamping Machine

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CLASSIFICATION DEFINITIONS
FOR ALL ZONES (CONT'D)

CLASS 3 Cement Mortar Lining Car Pusher, Cement Mortar Mixer (pipe relining), Cement Saw Operator (walk behind), Form Setter (road forms lead man), Grout Machine Operator, Gunnite (nozzle and machine man), Paving Block Rammers, Wagon Drill (air track or similar) Operators, Walk Behind Power Rollers (1 or 2 barrel), Walk Behind Roller and Tamper, Walk Behind Ditching Machine (trenchr or similar)

CLASS 4 - Blacksmith, Blaster, Brick and Block Pavers (wood, belgain and asphalt), Curb Cutters and Setters, Manhole or Catch Basin Builder (brick, block, concrete or any prefabrication)

CLASS 5 Multi-plate Pipe (aligning and securing) Placing Wire Mesh on Gunite projects, Reinforcing steel placers (bending, aligning and securing), Welder, elevated roadway drainage

CLASS 6 Welder (pipeline)

CLASS 7 Tunnel and Shaft Work-(Inside); Change House Attendent

CLASS 8 - Muckers, Brakeman and all other labor (includes installation of utility lines), Signal Man, Drill Runner Helper

CLASS 9 - Miners and Drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos)

CLASS 10 - Caisson and Tunnel Men under pressure (0-18 pounds)

CLASS 11 - Reinforcing steel placers (bending, aligning and securing)

	BASIC HOURLY RATES	BASIC HOURLY RATES	Fringe Benefits Pensions		
			H & W	PENSION	APPR TR
	ZONE 1	ZONE 2			
LANDSCAPE:/					
Landscape Laborer	$ 5 50	5 40	40	40	
Skilled Landscape Laborer	5 65	5 55	40	40	
Landscape Tractor Operator	6 00	5 90	40	40	

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AREA COVERED BY LANDSCAPE
LABORERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Venango, Washington, Westmoreland
ZONE 2 - Bedford, Blair, Cambria, Cameron, Centre, Clearfield, Clinton, Elk, Erie, Forest, Franklin, Fulton, Huntingdon, McKean, Mifflin, Potter, Somerset, Warren

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LINE CONSTRUCTION	-				
Journeyman Lineman	$11 32	30	113		056
Experienced Winch Truck Op	7 92	30	079		039
2nd 1000 Hrs	7 73	30	077		038
1st 1000 Hrs.	7 55	30	.075		037
Experienced Truck Driver	7 36	30	074		036
2nd 1000 Hrs	7 17	30	072		035
1st 1000 Hrs	6,98	30	071		034

AREA COVERED BY LINE CONSTRUCTION

Allegheny, Armstrong, Beaver, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington & Westmoreland Counties, Pennsylvania

	Basic Hourly Rates ZONE 1	BASIC HOURLY RATE ZONE 2	Fringe Benefits Payments		
			Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS					
CLASS 1	$ 9 93	9 64	65	60	09
CLASS 2	9 67	9 36	65	60	09
CLASS 3	7 31	7 02	65	60	09
CLASS 4	6 86	6 53	65	60	09
CLASS 5	6 71	6 42	65	60	09

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AREA COVERED BY POWER
EQUIPMENT OPERATORS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmorcland
ZONE 2 - Bedford, Cameron, Clarion, Clinton, Elk, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

CLASSIFICATION DEFINITION
FOR ALL ZONES

CLASS 1 - Austin Western or Similar (25 ton & over), Austin Western or Similar (under 25 ton), Autograder (C M I & similar), Backfiller, Backhoe - 360 degree Swing, Cableway, Caisson Drill (Similar to Hugh Williams), Central Mix Plant, Cooling Plant, Concrete Paving Mixer, Concrete Pump (self-propelled) Cranes, Cranes (Boom or mast 101 ft or over up to & including 150 ft inclusive of jib plus $.25), Cranes (Boom or mast over 150 ft up to & including 200 ft inclusive of jib plus $ 50), Cranes (Boom or mast over 200 ft inclusive of jib plus $ 75), Cranes (Tower-Stationary-Climbing Tower Crane), Derrick, Derrick Boat, Dozer, Dragline, Dredge, Dredge Hydraulic (1 Leverman 1 Oiler-1 Apprentice), Elevating Grader, Franki Pile Machine, Gradall (Remote control or otherwise), Grader (Power-Fine Grade), Helicopter (1500 lbs or over lift), Helicopter (Under 1500 lbs lift), Hilift (4 cy & over), Hoist 2 Drums or more (in one unit), Hydraulic Boom Truck (With pivotal cab) (Single motor-Pitman or similar), Kocal, Koering Skooper, Lead Mechanic, Locomotive (Std Gauge), Metro chip Harvester or similar, Mix Mobile, Mix Mobile (With Self Loading Attachment), Mucking Machine (Tunnel), Pile Driver Machine, Pipe Extrusion Machine, Presplitter Drill (Self Contained), Quad Nine, Refrigeration Plant (Soil stabilization), Scraper, Scraper (Multi-bowl), Shovel-Power, Slip Form Paver (C M.I & similar), Trenching Machine (30,000 lbs & over) Trenching Machine (Under 30,000 lbs), Tunnel Machine (Mark XXI Jarva or similar) and Whirley

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CLASSIFICATION DEFINITION
FOR ALL ZONES (CONT'D)

CLASS 2 - Asphalt Paving Machine (Spreader), Asphalt Plant Operator, Athey Loader, Auger (Tractor Mtd), Auger (Truck Mtd), Backhoe (Rear Pivotal Swing) (180 degree Swing), Boring Machine, Cable Placer or Layer, Compactor with Blade Concrete Batch Plant (Electronically Synochronized), Concrete Belt Placer (C M I. & similar), Concrete Finishing Machine & Spreader, Concrete Mixer (over 1 cy), Concrete Pump (Stationary), Core Drill (Truck or Skid Mtd. - similar to Penn Drill), Euclid Loader, Fork Lift (Lull or similar), Grader - Power, Grease Unit Operator (Head), Guard Rail Post Driver (Truck Mounted), Guard Rail Post Driver (Skid Type), Hilift (Under 4 cy), Hydraulic Boom Truck (Non-pivotal cab), Job Work Boat (Powered) (When assistance is required it shall be a Deckhand), Jumbo Operator, Locomotive (Narrow Gauge), Mechanic, Minor Equipment Operator (Accumulative four units), Mucking Machine, Over-Head Crane, Roller-Power-Asphalt, Ross Carrier, Side Boom or Tractor Mounted Boom, Stone Crusher (Screening-Washing Plants), Stone Spreader (Self-Propelled), Truck Mounted Drill (Davey or similar), Welder & Repairman and Well Point Pump Operator
CLASS 3 - Broom Finisher (C.M I or similar), Compactors/Rollers (Static or Vibratory) (Self-propelled), Curb Builder, Minor Equipment Operator (Two to three units), Multi-head Tie Tamper, Pavement Breaker (Self-propelled or ridden), Soil Stabilizer Machine, Tire Repairman (As per Agreement with Teamsters), Tractor (Snaking & Hauling), Well Driller & Horizontal and Winch or "A" Frame Truck (When hoisting & lowering)
CLASS 4 - Ballast Regulator, Compressor, Concrete Mixer (1 cy & under with skip), Concrete Saw (Ridden or self-propelled), Conveyor, Elevator (Material hauling only), Fork lift (Ridden or self-propelled), Form Line Machine, Generator, Grout Pump, Heater (Mechanical), Hoist (Single Drum), Ladavator, Light Plant, Mulching Machine, Personnel Boat (powered), Pulverizer, Pumps, Seeding Machine, Spray Cure Machine (power Driven), Subgrader, Tie Puller, Tugger and Welding Machine (Gas or Diesel)
CLASS 5 - Deck Hand, Farm Tractor, Fireman or Boiler, Mechanic's Helper, Oiler, Power Room, Side Delivery Shoulder Spreader (Attachment)

DECISION NO PA77-3023	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
TRUCK DRIVERS					
ZONE 1					
CLASS 1	$ 8 55	7 3%	4 2%		
CLASS 2	8 29	7 3%	4 2%		
CLASS 3	8 39	7 3%	4 2%		
CLASS 4	8 47	7 3%	4 2%		
CLASS 5	8 34	7 3%	4 2%		
CLASS 6	8 24	7 3%	4 2%		
CLASS 7	8 57	7 3%	4 2%		

CLASSIFICATIONS DEFINITIONS ZONE 1

CLASS I - Heavy Duty Trailer, such as Low-Boy, Dump Trailer, Pole Trailer, A Frames (when used for transporting materials), Dumpsters, Ross Carriers, Form Trucks, Dual-purpose Trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), Mechanical Tailgate Trucks, Bucket Self-loading Trucks, Farm Tractors (when pulling and hauling), Fork Lift Trucks (in storage areas and warehouses), Tar and Asphalt Distributing Trucks
CLASS 2 - Single-axle Ready mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc)
CLASS 3 - Tandem axle Ready mixed Concrete Trucks (Such as agitators barrel, redi-mix concrete trucks, etc.); Liquid Tank Trucks - Straight and Semi including water, sprinkler, oil trucks such as fuel, dump (tandem), Flat bottom, Siessors, and combination fuel and grease)
CLASS 4 - Tri-axle Ready-Mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc.); Tar and Asphalt Trailer Trucks; Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as Euclids, Athey Wagon, Payloader, Tournawagons, and similar equipment when ot self-loaded) Rated under forty-five tons, Tri Axle trucks
CLASS 5 - Trucks with Dolley or Trailer
CLASS 6 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pickup and similar equipment Also parts man and warehouseman)
CLASS 7 - Heavy off-the-road equipment (rated at forty-five tons or over): Bottom or Belly dump Trucks

DECISION NO PA77 3023	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
TRUCK DRIVERS					
ZONE 2					
CLASS 1	$ 8 35	7 3%	4 2%		
CLASS 2	8 03	7 3%	4 2%		
CLASS 3	8 14	7 3%	4 2%		
CLASS 4	8 30	7 3%	4 2%		
CLASS 5	8 19	7 3%	4 2%		
CLASS 6	8 14	7 3%	4 2%		
CLASS 7	8 00	7 3%	4 2%		
CLASS 8	8 39	7 3%	4 2%		

CLASSIFICATIONS DEFINITIONS ZONE 2

CLASS 1 - Heavy Duty Trailer, such as Low-Boy, Hi-Boy, Dump Trailer, Pole Trailer, A-Frames (when used for transporting materials), Dumpsters, Ross Carriers, Form Trucks, Dual-purpose Trucks (when load has been loaded or unloaded with truck winch, loading, hauling and unloading), Mechanical Tailgate Trucks, Bucket Self-loading Trucks, Farm Tractors (when pulling and Hauling), Fork Lift Trucks (in storage areas and warehouses), Tar and Asphalt Distributing Trucks
CLASS 2 - Single-axle Ready mixed Concrete Trucks (such as agitators, barrel, redi mix concrete trucks, etc)
CLASS 3 - Tandem-axle Ready-mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc)
CLASS 4 - Tri-axle Ready mixed Concrete Trucks (such as agitators, barrel, redi-mix concrete trucks, etc); Tar and Asphalt Trailer Trucks; Tri-axle Trucks); Heavy equipment whose capacity exceeds that for which state licenses are issued - specifically refers to units in excess of 8 feet width (such as Euclids, Athey Wagon, Payloader, Tournawagons, and similar equipment when not self-loaded) Rated under forty-five tons
CLASS 5 - Liquid Tank Trucks - Straight and Semi (including water, sprinkler, oil trucks, etc); Trucks over 33,000 lbs gross load category (including all types of trucks such as fuel, dump (tandem), flat bottom, scissors and combination fuel and grease);
CLASS 6 - Trucks with Dolley or Trailer
CLASS 7 - Trucks under 33,000 lbs. gross load category (including all types of trucks such as fuel, dump, flat bottom, pickup and similar equipment Also parts man and warehouseman.)
CLASS 8 - Heavy off-the-road Equipment (rated at forty-five tons and over); Bottom or Belly dump trucks

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Centre Clearfield, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland
ZONE 2 - Bedford, Cameron, Clarion, Clinton, Elk, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

SUPERSEDEAS DECISION

STATE: Texas

COUNTY: Statewide (excluding Dallas-Fort Worth Regional Airport)

DECISION NO : TX77-4008

DATE: Date of Publication

Supersedes Decision No TX76-4153 dated October 1, 1976, in 41 FR 43635

DESCRIPTION OF WORK: See Area Covered by Various Zones"

	ZONE 1 Basic Hourly Rates	ZONE 2 Basic Hourly Rates	ZONE 3 Basic Hourly Rates	ZONE 4 Basic Hourly Rates	ZONE 5 Basic Hourly Rates
Air Tool Man	$ -	$2 75	$2 75	$ -	$2 75
Asphalt Heaterman	3 50	3 45	3 00	3 00	3 00
Asphalt Raker	3.90	3 25	3 55	3 10	3 25
Asphalt Shoveler	-	2 75	2 75	2 85	2 30
Batching Plant Scaleman	4 55	4 00	3 45	3 60	3 60
Batterboard Setter	-	3 00	3 65	2 50	3 45
Carpenter	4 70	4 25	4 50	3 90	4.00
Carpenter Helper	3 75	3 55	3 85	3 60	3 10
Concrete Finisher (Paving)	4 30	4 00	4 25	4 00	4 00
Concrete Finisher Helper (Paving)	3 00	3 20	3 25	3 00	2 50
Concrete Finisher (Structures)	4 80	4 05	4 25	3 40	3 50
Concrete Finisher Helper (Structures)	3 90	3 00	3 35	2 75	3 20
Concrete Rubber	-	-	-	2 75	3 00
Electrician	-	6 25	4 00	6 60	6 85
Electrician Helper	-	3 80	-	5 00	3 60
Fireman	-	-	-	-	-
Form Builder (Structures)	4 70	3 50	4 55	3 40	3 90
Form Builder Helper (Structures)	3 75	-	3 50	3 00	3 25
Form Liner (Paving and Curb)	4 00	-	-	2 85	-
Form Setter (Paving and Curb)	4 00	4 50	4 15	3 65	4 00
Form Setter Helper (Paving & Curb)	3 65	3 70	2 75	3 00	3 75
Form Setter (Structures)	5 05	5 05	5 05	3 65	3 90
Form Setter Helper (Structures)	4 40	3 60	2 90	3 15	3 10
Laborer, Common	3 00	2 75	2 50	2 50	2 30
Laborer, Utility Man	3 30	3 50	3 35	2 95	2 85
Manhole Builder Brick	3 85	-	3 00	-	3 00
Mechanic	4 85	4 40	4 40	4 25	4 05
Mechanic Helper	3 50	3 75	3 00	3 35	3 35
Oiler	4 00	3 80	3 00	3 00	3 15
Serviceman	3 90	3 75	3 60	3 65	3 00
Painter (Structures)	5 00	-	3 50	5 50	4 90
Painter Helper (Structures)	-	-	-	3 70	3 00
Piledrivermen	-	-	-	4 40	4 75
Pipelayer	3 75	3 85	3 50	3 15	3 50
Pipelayer Helper	3 00	3 50	2 90	2 75	2 90
Pneumatic Mortarman	-	-	-	-	2 65
Powderman	4 40	4 00	4 00	4 00	3 75
Powderman Helper	-	-	2 75	3 40	2 50
Reinforcing Steel Setter (Paving)	4 35	-	-	3 50	-
Reinforcing Steel Setter (Structures)	4 75	4 25	4 05	3 40	3 90
Reinforcing Steel Setter Helper	$3 05	$ -	$3 75	$3 00	$3 10
Steel Worker (Structural)	-	-	-	-	3 25
Steel Worker Helper (Structural)	-	-	-	-	-
Sign Erector	3 25	-	-	3 50	3 35
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	3 70	4 00	3 25	3 50	3 25
Swamper	3 45	3 25	-	3 10	3 10
Power Equipment Operators:					
Asphalt Distributor	4 35	3 75	3 70	3 10	3 50
Asphalt Paving Machine	4 65	3.90	3 50	3 35	4 00
Broom or Sweeper Operator	3 25	4 00	3 25	3 30	3 25
Bulldozer 150 HP and Less	3 75	3 40	3 50	3 75	3 75
Bulldozer, over 150 HP	4 50	4 00	4 00	4 00	4 10
Concrete Paving Curing Machine	3 75	-	-	-	-
Concrete Paving Finishing Machine	4 80	4 35	-	4 65	-
Concrete Paving Form Grader	3 75	-	-	-	-
Concrete Paving Gang Vibrator	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	4 80	-	-	-	3 25
Concrete Paving Saw	4 30	4 00	-	-	-
Concrete Paving Spreader	-	-	-	-	4 35
Paving Sub Grader	-	-	-	-	-
Crane Clamshell Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 50	4 05	4 10	4 00	3 85
Crane Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5 05	5 05	4 95	4 45	4 50
Crusher or Screening Plant Op	4 90	4 00	3 50	3 55	3 75
Elevating Grader	-	4 00	4 10	-	3 50
Form Loader	-	-	-	-	3 25
Foundation Drill Operator (Crawler Mounted)	5.35	3 25	4 60	-	6 00
Foundation Drill Operator (Truck Mounted)	5 85	4 75	4 90	-	5 50
Foundation Drill Operator Helper	3 90	-	-	-	3 75
Front End Loader (2½ CY & Less)	4 00	3 80	3 50	3 50	3 50
Front End Loader (Over 2½ CY)	4 70	4 30	4 00	4 10	4 00
Hoist (Double Drum and Less)	-	-	-	3 10	-

	ZONE 1 Basic Hourly Rates	ZONE 2 Basic Hourly Rates	ZONE 3 Basic Hourly Rates	ZONE 4 Basic Hourly Rates	ZONE 5 Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Mixer (Over 16 CF)	$4 60	$ -	$ -	$ -	$ -
Mixer (16 CF and Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	5 05	5 00	4 70	4 60	4 50
Motor Grader Operator	4 65	4 50	4 25	4 15	4 00
Pump Crete	-	-	-	-	-
Roller, Steel Wheel (Plant Mix Pavements)	3 90	3 50	3 50	3 35	3 00
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 80	3 00	3 00	3 15	3 00
Roller, Pneumatic (Self-Propelled)	3 50	3 00	3 00	3 05	2 95
Scrapers (17 CY and Less)	4 05	3 75	3 80	3 75	3 50
Scrapers (Over 17 CY)	4 50	4 00	4 15	3 75	3 75
Self-Propelled Hammer	-	-	3 50	-	3 00
Side Boom	4 00	3 25	3 50	-	-
Tractor (Crawler Type) 150 HP and Less	3 60	3 50	3 10	3 50	3 00
Tractor (Crawler Type) over 150 HP	4 00	4 00	3 50	3 80	4 00
Tractor (Pneumatic) 80 HP and Less	3 55	3 00	3 00	2 85	3 00
Tractor (Pneumatic) over 80 HP	3 90	4 00	3 25	3 25	3 25
Traveling Mixer	4 35	3 25	2 75	4 00	3 10
Trenching Machine, Light	4 00	3 00	3 70	3 75	3 50
Trenching Machine, Heavy	4 00	-	3 80	4 25	4 25
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 65	3 75	3 50	3 50	3 50
Truck Drivers:					
Single Axle, Light	3 00	3 00	3 00	3 00	2 95
Single Axle, Heavy	3 50	3 50	3 00	3 00	3 00
Tandem Axle or Semitrailer	3 00	3 00	3 10	-	2 95
Lowboy-Float	3 55	3 00	3 35	3 00	3 35
Transit-Mix	3 50	-	-	3 10	-
Winch	3 25	-	3 40	-	3 25
Vibrator Man (Hand Type)	3 05	-	-	-	-
Weighman (Truck Scales)	3 00	2 95	2 50	2 85	-
Welder	5 05	4 50	4 00	4 20	4 00
Welder Helper	-	-	-	-	3 75

	ZONE 6 Basic Hourly Rates	ZONE 7 Basic Hourly Rates	ZONE 8 Basic Hourly Rates	ZONE 9 Basic Hourly Rates	ZONE 10 Basic Hourly Rates
Air Tool Man	$2 75	$2 50	$3 30	$3 00	$2 75
Asphalt Heaterman	3 25	3 25	2 90	3 40	3 50
Asphalt Raker	3 25	3 50	3 50	3 90	3 75
Asphalt Shoveler	2 75	2 90	-	-	3 00
Batching Plant Scaleman	3 40	3 00	3 75	4 20	4 25
Batterboard Setter	-	3 90	-	-	-
Carpenter	4 00	4 20	4 50	4 00	4 25
Carpenter Helper	2 95	3 00	3 00	3 00	3 50
Concrete Finisher (Paving)	3 35	4 00	4 50	4 25	4 50
Concrete Finisher Helper (Paving)	2 75	2 50	3 60	3 25	3 25
Concrete Finisher (Structures)	3 50	4 00	4 15	4 20	4 25
Concrete Finisher Helper (Structures)	3 15	3 25	3 75	3 45	3 55
Concrete Rubber	-	3 00	2 80	3 35	3 50
Electrician	7 50	7 65	7 75	6 00	6 75
Electrician Helper	-	3 15	2 75	4 00	4 00
Fireman	-	-	-	-	-
Form Builder (Structures)	4 25	4 00	4 00	4 00	4 00
Form Builder Helper (Structures)	3 50	3 75	3 75	3 25	3 80
Form Liner (Paving and Curb)	3 00	3 50	3 75	-	4 50
Form Setter (Paving and Curb)	3 70	3 70	4 00	3 85	4 25
Form Setter Helper (Paving & Curb)	2 85	3 00	3 50	-	3 50
Form Setter (Structures)	3 80	4 10	3 75	4 25	4 25
Form Setter Helper (Structures)	3 00	3 00	3 30	3 25	3 85
Laborer Common	2 60	2 50	2 50	2 50	2 75
Laborer, Utility Man	3 00	3 10	2 75	3 00	3 35
Manhole Builder, Brick	3 50	3 75	-	-	-
Mechanic	4 10	4 25	4 30	4 50	4 45
Mechanic Helper	3 60	3 75	4 00	4 00	3 35
Oiler	3 10	3 35	3 75	3 25	3 80
Serviceman	2 60	3 40	3 55	3 50	4 00
Painter (Structures)	-	4 00	4 25	5 25	-
Painter Helper (Structures)	-	3 50	-	-	-
Piledriverman	3 95	3 75	-	-	4 50
Pipelayer	2 85	3 50	3 35	3 35	4 00
Pipelayer Helper	2 60	3 25	3 00	3 00	3 00
Pneumatic Mortarman	-	-	-	-	-
Powderman	3 75	-	4 40	4 50	4 35
Powderman Helper	-	-	-	-	-
Reinforcing Steel Setter (Paving)	-	-	-	-	3 00
Reinforcing Steel Setter (Structures)	3 75	3 65	4 00	4 00	3 50
Reinforcing Steel Setter Helper	2 60	3 50	3 50	3 00	3 00

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Steel Worker (Structural)	$ -	$ -	$4 25	$ -	$4 15
Steel Worker Helper (Structural)	-	-	-	-	3 75
Sign Erector	-	-	3 25	3 25	4 25
Sign Erector Helper	-	-	2 95	3 00	3 90
Spreader Box Man	3 60	3 60	3 00	4 00	4 00
Swamper	-	-	-	3 30	-
Power Equipment Operators:					
Asphalt Distributor	3 40	3 70	3 75	3 95	4 00
Asphalt Paving Machine	3 50	4 25	4 00	4 00	4 00
Broom or Sweeper Operator	3 25	3 50	2 50	3 15	3 25
Bulldozer 150 HP and Less	3 75	3 70	3 50	4 00	4 00
Bulldozer, over 150 HP	4 15	4.15	4 00	4 40	4 25
Concrete Paving Curing Machine	-	3 50	-	3 50	4 50
Concrete Paving Finishing Machine	-	3 00	-	-	4 00
Concrete Paving Form Grader	-	3 50	-	-	-
Concrete Paving Gang Vibrator	-	3 50	-	-	-
Concrete Paving Grinder	-	3 50	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	4 50
Concrete Paving Mixer	-	-	-	-	4 00
Concrete Paving Saw	3 50	-	-	3 50	4 30
Concrete Paving Spreader	-	-	-	-	3 00
Paving Sub Grader	-	3 50	-	-	4 00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	3 50	3 90	4 00	4 20	4 25
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4 50	4 50	4 75	4 50	4 75
Crusher or Screening Plant Op	-	3 50	-	4 15	-
Elevating Grader	-	4 00	-	-	-
Form Loader	-	-	-	-	3 25
Foundation Drill Operator (Crawler Mounted)	-	-	5 75	3 50	-
Foundation Drill Operator (Truck Mounted)	4 50	-	5 50	4 35	4 60
Foundation Drill Operator Helper	-	-	4 00	3 00	3 50
Front End Loader (2½ CY and Less)	3 50	3 75	3 50	4 00	3 75
Front End Loader (Over 2½ CY)	3 85	4 00	3 90	4 25	4 50
Hoist (Double Drum and Less)	-	-	-	-	-
Mixer (Over 16 CF)	3 00	4 30	-	-	3 75
Mixer (16 CF and Less)	3 00	-	-	-	3 75

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators (Cont d):					
Motor Grader Operator Fine Grade	$4 50	$5 00	$4 50	$5 00	$4 50
Motor Grader Operator	3 50	4 25	3 95	4 25	4 25
Pump Crete	-	-	-	-	-
Roller Steel Wheel (Plant-Mix Pavements)	3 50	3 50	3 15	3 00	3 90
Roller Steel Wheel (Other-Flat Wheel or Tamping)	2 75	2 70	3 00	3 30	3 50
Roller, Pneumatic (Self-Propelled)	3 30	3 10	2 95	3 40	3 55
Scrapers (17 CY and Less)	3 00	3 25	3 75	3 75	4 25
Scrapers (Over 17 CY)	3 60	3 75	4 05	4 00	4 50
Self-Propelled Hammer	3 15	-	-	-	4 25
Side Boom	-	-	-	-	-
Tractor (Crawler Type) 150 HP and Less	2 80	2 80	2 75	3 35	3 45
Tractor (Crawler Type) over 150 HP	4 00	3 85	4 00	3 75	4 50
Tractor (Pneumatic) 80 HP and Less	3 00	2 60	3 25	3 25	3 60
Tractor (Pneumatic) over 80 HP	3.45	3 40	3 75	3 75	3 90
Traveling Mixer	3 25	3.20	-	3 60	3 35
Trenching Machine Light	3 75	3 25	3 25	3 25	-
Trenching Machine, Heavy	-	-	4 50	3 85	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	3 25	3 10	3 75	3 90
Truck Drivers:					
Single Axle, Light	2 60	2 90	3 15	3 25	3 00
Single Axle, Heavy	2 75	3 00	3 25	-	3 60
Tandem Axle or Semitrailer	-	3 00	3 50	-	3 50
Lowboy-Float	3 50	3 50	-	3 35	4 50
Transit-Mix	-	-	-	-	3 25
Winch	-	3 00	-	-	3 50
Vibrator Man (Hand Type)	-	2 50	3 00	-	-
Weighman (Truck Scales)	-	-	-	2 50	3 00
Welder	3 75	3 90	5 00	4 15	4 50
Welder Helper	-	3 50	-	3 25	-

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$3 15	$ -	$2 75	$2 50	$3 50
Asphalt Heaterman	3 75	3 00	3 25	-	3 75
Asphalt Raker	4 00	3 50	3 70	3 25	4 05
Asphalt Shoveler	3 25	2 85	3 10	-	4 00
Batching Plant Scaleman	4 00	4 15	2 75	2 85	4 75
Batterboard Setter	-	-	-	-	4 15
Carpenter	4 25	4 50	4 85	4 35	5 25
Carpenter Helper	3 50	3 65	3 45	4 00	4 00
Concrete Finisher (Paving)	4 50	4 75	4 50	4 25	5 35
Concrete Finisher Helper (Paving)	3 25	4 10	3 65	-	4 00
Concrete Finisher (Structures)	4 50	4 30	4 00	4 50	5 00
Concrete Finisher Helper (Structures)	3 50	3 60	3 75	4 25	3 50
Concrete Rubber	3 25	3 10	-	-	3 80
Electrician	5 85	5 75	5 00	6 75	6 00
Electrician Helper	3 75	-	-	3 50	3 50
Fireman	-	-	2 90	3 00	-
Form Builder (Structures)	4 50	4 00	4 30	4 40	4 50
Form Builder Helper (Structures)	3 75	3 25	3 00	3 80	3 75
Form Liner (Paving and Curb)	4 10	4 05	3 75	-	5 20
Form Setter (Paving and Curb)	4 00	4 00	3 50	-	5 00
Form Setter Helper (Paving & Curb)	3 00	3 25	3 25	-	4 00
Form Setter (Structures)	4 25	4 25	4 45	4 25	4 85
Form Setter Helper (Structures)	3 00	3 40	3 25	3 65	3 70
Laborer, Common	2 75	2 85	2 50	2 50	3 00
Laborer, Utility Man	3 00	3 40	3 00	3.25	3 60
Manhole Builder, Brick	-	-	-	-	3 90
Mechanic	4 50	4.50	4 75	4 70	5 50
Mechanic Helper	3 75	3 90	3 60	3 40	4 10
Oiler	3 75	3 75	3 75	3 50	4 15
Serviceman	3 50	3 35	3 45	3 00	4 30
Painter (Structures)	5 50	4 50	-	-	5 75
Painter Helper (Structures)	4 50	-	-	-	3 75
Piledrivermen	-	5 25	-	-	6 00
Pipelayer	3 85	3 25	3 60	3 25	4 60
Pipelayer Helper	3 00	3 00	2 75	2 75	3 50
Pneumatic Mortarman	-	-	-	-	-
Powderman	4 50	4 25	-	3 40	-
Powderman Helper	-	3 25	-	-	-
Reinforcing Steel Setter (Paving)	3 00	3 50	-	-	4 30
Reinforcing Steel Setter (Structures)	4 00	3 75	3 50	3 25	4 55
Reinforcing Steel Setter Helper	2 75	3 25	3 00	-	3 00

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Steel Worker (Structural)	$3 75	$4 35	$ -	$ -	$4 40
Steel Worker Helper (Structural)	3 00	-	-	-	3 25
Sign Erector	4 00	-	-	-	3 25
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	3 65	3 75	4 10	3 75	4 00
Swamper	3 30	3 30	-	-	-
Power Equipment Operators:					
Asphalt Distributor	3 75	3 50	4 00	3 10	4 50
Asphalt Paving Machine	4 00	4 00	4 00	4 10	4 50
Broom or Sweeper Operator	3 50	3 75	2 75	3 25	3 40
Bulldozer, 150 HP and Less	4 25	4 00	4 00	4 00	4 40
Bulldozer, over 150 HP	4 50	4 50	4 50	4 30	5 00
Concrete Paving Curing Machine	4 50	5 00	-	-	4 45
Concrete Paving Finishing Machine	3 70	4 50	-	-	5 00
Concrete Paving Form Grader	4 00	-	-	-	4.25
Concrete Paving Gang Vibrator	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	5 25
Concrete Paving Joint Sealer	4 00	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	4 50
Concrete Paving Mixer	4 00	4 50	-	-	-
Concrete Paving Saw	4 00	4 50	-	-	5 00
Concrete Paving Spreader	-	4 00	-	-	5 40
Paving Sub Grader	4 00	4 00	-	-	-
Crane Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 25	4 30	4 50	4 00	4 40
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and over)	4 50	4 50	4 90	4 50	5 70
Crusher or Screening Plant Op	4 50	4 35	-	3 25	3 50
Elevating Grader	-	-	-	-	-
Form Loader	3 25	3 75	-	-	3 80
Foundation Drill Operator (Crawler Mounted)	-	5 75	3 50	-	6 00
Foundation Drill Operator (Truck Mounted)	4 55	5 75	5 75	-	4 50
Foundation Drill Operator Helper	3 35	3 90	-	-	-
Front End Loader (2½ CY and Less)	3 75	3 75	3 85	3 50	4 00
Front End Loader (Over 2½ CY)	4 30	4 50	4 60	4 20	4 95
Hoist (Double Drum and Less)	-	-	-	-	3 50
Mixer (Over 16 CF)	-	4 50	-	-	4 65
Mixer (16 CF and Less)	3 75	-	-	-	4 00

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Motor Grader Operator Fine Grade	$4 50	$4 50	$5 00	$4 50	$5 00
Motor Grader Operator	4 00	4 25	4 00	4 00	4 60
Pump Crete	-	3 60	-	-	-
Roller, Steel Wheel (Plant-Mix Pavements)	4 25	3 80	4 00	3 60	4 00
Roller Steel Wheel (Other-Flat Wheel or Tamping)	3 50	3 00	3 55	3 25	3 50
Roller Pneumatic (Self-Propelled)	3 50	3 00	3 60	2 85	4 00
Scrapers (17 CY and Less)	4 00	3 75	4 00	3 75	3 75
Scrapers (Over 17 CY)	4 50	4 00	4 50	4 00	4 45
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	-	3.35	-	-
Tractor (Crawler Type) 150 HP - and Less	3 25	3 60	3 55	-	4 00
Tractor (Crawler Type) over 150 HP	4 25	3 75	4 60	3 50	5 00
Tractor (Pneumatic) 80 HP and Less	3 00	3 25	3 50	3 00	3 00
Tractor (Pneumatic) over 80 HP	4 25	3 50	4 00	-	3 25
Traveling Mixer	3 75	4 05	3 50	3 00	3 90
Trenching Machine, Light	3 75	-	-	-	3 75
Trenching Machine Heavy	3 85	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 35	3 40	-	3 00	3 10
Truck Drivers:					
Single Axle Light	3 00	3 00	3 00	3 00	3 00
Single Axle, Heavy	3 40	3 00	3 40	-	4 00
Tandem Axle or Semitrailer	3 00	3 00	3 25	3 00	3 70
Lowboy-Float	3 80	3 00	4 15	-	4 60
Transit-Mix	3 50	-	-	-	3 50
Winch	3 50	-	-	-	3 50
Vibrator Man (Hand Type)	3 00	2 85	-	-	-
Weighman (Truck Scales)	3 00	3 15	-	-	3 35
Welder	4 55	4 60	4 50	3 60	5 50
Welder Helper	3 50	-	-	-	4 40

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	$ -				
Asphalt Heaterman	3 60				
Asphalt Raker	4 00				
Asphalt Shoveler	-				
Batching Plant Scaleman	4 00				
Batterboard Setter	-				
Carpenter	5 10				
Carpenter Helper	4 00				
Concrete Finisher (Paving)	5 60				
Concrete Finisher Helper (Paving)	4 50				
Concrete Finisher (Structures)	5 50				
Concrete Finisher Helper (Structures)	4 00				
Concrete Rubber	-				
Electrician	6 65				
Electrician Helper	-				
Fireman	-				
Form Builder (Structures)	4.25				
Form Builder Helper (Structures)	-				
Form Liner (Paving and Curb)	-				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	-				
Form Setter (Structures)	5 50				
Form Setter Helper (Structures)	3 50				
Laborer, Common	3 50				
Laborer, Utility Man	4 00				
Manhole Builder Brick	-				
Mechanic	4 75				
Mechanic Helper	4 00				
Oiler	4 00				
Serviceman	3 50				
Painter (Structures)	-				
Painter Helper (Structures)	-				
Piledrivermen	5 00				
Pipelayer	3 50				
Pipelayer Helper	-				
Pneumatic Mortarman	-				
Powderman	-				
Powderman Helper	-				
Reinforcing Steel Setter (Paving)	-				
Reinforcing Steel Setter (Structures)	4 75				
Reinforcing Steel Setter Helper	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Steel Worker (Structural)	$ -				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Sign Erector Helper	-				
Spreader Box Man	4 50				
Swamper	-				
Power Equipment Operators:					
Asphalt Distributor	5 00				
Asphalt Paving Machine	4 60				
Broom or Sweeper Operator	3 50				
Bulldozer, 150 HP and Less	4 75				
Bulldozer, over 150 HP	5 00				
Concrete Paving Curing Machine	4 50				
Concrete Paving Finishing Machine	4 50				
Concrete Paving Form Grader	4 50				
Concrete Paving Gang Vibrator	-				
Concrete Paving Grinder	-				
Concrete Paving Joint Machine	4 50				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	4 50				
Concrete Paving Mixer	-				
Concrete Paving Saw	-				
Concrete Paving Spreader	4 75				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1¼ CY)	5 00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY and Over)	5 00				
Crusher or Screening Plant Op	-				
Elevating Grader	-				
Form Loader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Operator Helper	-				
Front End Loader (2½ CY and Less)	4 50				
Front End Loader (Over 2½ CY)	5 00				
Hoist (Double Drum and Less)	-				
Mixer (Over 16 CF)	-				
Mixer (16 CF and Less)	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators (Cont'd):					
Motor Grader Operator, Fine Grade	$5 00				
Motor Grader Operator	4 50				
Pump Crete	-				
Roller, Steel Wheel (Plant-Mix Pavements)	4 50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4 50				
Roller, Pneumatic (Self-Propelled)	4 50				
Scrapers (17 CY and Less)	4 35				
Scrapers (Over 17 CY)	5 00				
Self-Propelled Hammer	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP and Less	-				
Tractor (Crawler Type) over 150 HP	4 50				
Tractor (Pneumatic) 80 HP and Less	3 50				
Tractor (Pneumatic) over 80 HP	4 50				
Traveling Mixer	4 50				
Trenching Machine, Light	-				
Trenching Machine, Heavy	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Drivers:					
Single Axle, Light	3 50				
Single Axle, Heavy	3 50				
Tandem Axle or Semitrailer	3 50				
Lowboy-Float	5 75				
Transit-Mix	-				
Winch	-				
Vibrator Man (Hand Type)	-				
Weighman (Truck Scales)	-				
Welder	5 50				
Welder Helper	-				

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer Armstrong Baylor Briscoe, Carson, Castro, Childress Clay Collingsworth Dallam, Deaf Smith, Donley Gray, Hall Hansford Hardeman Hartley Hemphill Hutchinson Lipscomb Montague, Moore, Ochiltree Oldham, Parmer, Potter, Randall Roberts Sherman Swisher Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson Dickens, Fisher, Floyd, Foard, Gaines Garza, Hale Haskell Hockley, Jones, Kent King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 3 - Andrews, Brown, Callahan, Coke Coleman Comanche, Concho Crane Crockett, Eastland, Ector, Erath, Glasscock Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 4 - Brewster, Culberson El Paso*, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties,

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

*Not to be used for Utilities Incidental to General Building Construction in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar Comal, Dimmit, Edwards Frio, Guadalupe Kendall, Kerr, Kinney LaSalle Maverick, McMullen, Medina, Real Uvalde Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 6 - Brooks, Cameron Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. The wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 8 - Austin Bastrop Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales Hays, Lee, Llano, Mason, Travis & Williamson Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 9 - Bell*, Bosque, Coryell*, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories

*Not to be used for Paving & Utilities Incidental to General Building Construction in Bell & Coryell Counties

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Sommervell, Tarrant* & Wise Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

*Not to be used for Utilities Incidental to General Building Construction in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson, & Rockwall Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 12 - Bowie Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Incidental Shore Work and Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 14 - Brazos, Burleson Grimes, Leon, Madison, Milam, Robertson, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

ZONE 15 - Brazoria, Fort Bend, Galveston*, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work performed on the site of water or sewage treatment facilities) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

*Not to be used for Paving & Utilities Incidental to General Building Construction on Galveston Island

ZONE 16 - Chambers, Hardin Jefferson*, Liberty & Orange* Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction This wage determination does not apply to any residential construction (single family homes and garden type apartments up to and including 4 stories)

*Not to be used for Heavy Construction, Incidental Shore Work and Paving & Utilities Incidental to General Building Construction in Jefferson & Orange Counties

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Anderson, Cherokee & Henderson

DECISION NO : TX77-4009

DATE: Date of Publication

Supersedes Decision No TX76-4154, dated October 1 1976 in 41 FR 43643

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
AIR CONDITIONING MECHANICS	$ 4 30				
BRICKLAYERS	5 00				
CARPENTERS	4 80				
CEMENT MASONS	3 12				
ELECTRICIANS	6 35		1%		1/4%
IRONWORKERS	4 25				
LABORERS	2 30				
PAINTERS:					
Brush	4 00				
Tape & bed	5.00				
PLUMBERS	5 50				
ROOFERS	3.50				
SHEET METAL WORKERS	3 00				
SOFT FLOOR LAYERS	3.50				
TRUCK DRIVERS	2 50				

DECISION NO. TX77-4009

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Air Tool Man	$ 2 75				
Asphalt Heaterman	3 25				
Asphalt Raker	3 70				
Asphalt Shoveler	3 10				
Batching Plant Scaleman	2 75				
Carpenter	4 85				
Carpenter Helper	3 45				
Concrete Finisher (Paving)	4 50				
Concrete Finisher Helper (Paving)	3 65				
Concrete Finisher (Structures)	4 00				
Concrete Finisher Helper (Structures)	3 75				
Electrician	5 00				
Fireman	2 90				
Form Builder (Structures)	4 30				
Form Builder Helper (Structures)	3 00				
Form Liner (Paving and Curb)	3 75				
Form Setter (Paving and Curb)	3 50				
Form Setter Helper (Paving & Curb)	3 25				
Form Setter (Structures)	4 45				
Form Setter Helper (Structures)	3 25				
Laborer, Common	2 50				
Laborer, Utility Man	3 00				
Mechanic	4 75				
Mechanic Helper	3 60				
Oiler	3 75				
Serviceman	3 45				
Pipelayer	3 60				
Pipelayer Helper	2 75				
Reinforcing Steel Setter (Structures)	3 50				
Reinforcing Steel Setter Helper	3 00				
Spreader Box Man	4 10				
Power Equipment Operators:					
Asphalt Distributor	4 00				
Asphalt Paving Machine	4 00				
Broom or Sweeper Operator	2 75				
Bulldozer 150 HP and Less	4 00				
Bulldozer, over 150 HP	4 50				

DECISION NO TX77 4009

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 4 50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4 90				
Foundation Drill Operator (Crawler Mounted)	3.50				
Foundation Drill Operator (Truck Mounted)	5 75				
Front End Loader (2½ CY & Less)	3 85				
Front End Loader (Over 2½ CY)	4 60				
Motor Grader Operator, Fine Grade	5 00				
Motor Grader Operator	4 00				
Roller, Steel Wheel (Plant-Mix Pavements)	4 00				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 55				
Roller, Pneumatic (Self-Propelled)	3 60				
Scrapers (17 CY and Less)	4 00				
Scrapers (Over 17 CY)	4 50				
Side Boom	3 35				
Tractor (Crawler Type) 150 HP and Less	3 55				
Tractor (Crawler Type) over 150 HP	4 60				
Tractor (Pneumatic) 80 HP & Less	3 50				
Tractor (Pneumatic) over 80 HP	4 00				
Traveling Mixer	3 50				
Truck Drivers:					
Single Axle, Light	3 09				
Single Axle, Heavy	3 40				
Tandem Axle or Semitrailer	3 25				
Lowboy Float	4 15				
Welder	4 50				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Armstrong, Carson, Castro Childress, Collingsworth, Dallam, Deaf Smith, Donley Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb Moore, Ochiltree, Oldham, Potter, Randall Roberts Sherman, Swisher & Wheeler

DECISION NO : TX77 4010

DATE: Date of Publication

Supersedes Decision No TX76 4155 dated October 1 1976, in 41 FR 43645.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 9 30		30		
CARPENTERS	9 20				
CEMENT MASONS	8 30				
ELECTRICIANS	9 88	40	17		1/2%
LABORERS:					
Laborers	4 89	43	15		
Mason tenders	5 04	43	15		
PAINTERS	7 95		.30		
PLUMBERS	8 56	35	55	60	
SHEET METAL WORKERS	5 08		10		
TILE SETTERS	4 60				

DECISION NO. TX77-4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Heaterman	$ 3 50				
Asphalt Raker	3 90				
Batching Plant Scaleman	4 55				
Carpenter	4 70				
Carpenter Helper	3 75				
Concrete Finisher (Paving)	4 30				
Concrete Finisher Helper (Paving)	3 00				
Concrete Finisher (Structures)	4 80				
Concrete Finisher Helper (Structures)	3 90				
Form Builder (Structures)	4 70				
Form Builder Helper (Structures)	3 75				
Form Liner (Paving and Curb)	4 00				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	3 65				
Form Setter (Structures)	5 05				
Form Setter Helper (Structures)	4 40				
Laborer Common	3 00				
Laborer, Utility Man	3 30				
Manhole Builder Brick	3 85				
Mechanic	4 85				
Mechanic Helper	3 50				
Oiler	4 00				
Serviceman	3 90				
Painter (Structures)	5 00				
Pipelayer	3 75				
Pipelayer Helper	3 00				
Powderman	4 40				
Reinforcing Steel Setter (Paving)	4 35				
Reinforcing Steel Setter (Structures)	4 75				
Reinforcing Steel Setter Helper	3 05				
Sign Erector	3 25				
Spreader Box Man	3 70				
Swamper	3 45				
Power Equipment Operators:					
Asphalt Distributor	4 35				
Asphalt Paving Machine	4 65				
Broom or Sweeper Operator	3 25				
Bulldozer, 150 HP and Less	3 75				
Bulldozer over 150 HP	4 50				

DECISION NO TX77 4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Concrete Paving Curing Machine	$ 3 75				
Concrete Paving Finishing Machine	4 80				
Concrete Paving Form Grader	3 75				
Concrete Paving Mixer	4 80				
Concrete Paving Saw	4 30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5 05				
Crusher or Screening Plant Op	4 90				
Foundation Drill Operator (Crawler Mounted)	5 35				
Foundation Drill Operator (Truck Mounted)	5 85				
Foundation Drill Operator Helper	3 90				
Front End Loader (2½ CY & Less)	4 00				
Front End Loader (Over 2½ CY)	4 70				
Mixer (Over 16 CF)	4 60				
Motor Grader Operator, Fine Grade	5 05				
Motor Grader Operator	4 65				
Roller, Steel Wheel (Plant-Mix Pavements)	3 90				
Roller, Steel Wheel (Other Flat Wheel or Tamping)	3 80				
Roller, Pneumatic (Self-Propelled)	3 50				
Scrapers (17 CY and Less)	4 05				
Scrapers (Over 17 CY)	4 50				
Side Boom	4 00				
Tractor (Crawler Type) 150 HP and Less	3 60				
Tractor (Crawler Type) over 150 HP	4 00				
Tractor (Pneumatic) 80 HP & Less	3 55				
Tractor (Pneumatic) over 80 HP	3 90				
Traveling Mixer	4.35				
Trenching Machine, Light	4 00				
Trenching Machine, Heavy	4 00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 65				

DECISION NO. TX77-4010

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck Drivers:					
Single Axle, Light	$ 3 00				
Single Axle, Heavy	3 50				
Tandem Axle or Semitrailer	3 00				
Lowboy-Float	3 55				
Transit Mix	3 50				
Winch	3 25				
Vibrator Man (Hand Type)	3 05				
Weighman (Truck Scales)	3 00				
Welder	5 05				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Bosque Freestone, Hill, Limestone, McLennan & Navarro

DECISION NO : TX77-4011

DATE: Date of Publication

Supersedes Decision No TX76-4161, dated October 15, 1976, in 41 FR 45814 and also dated October 22, 1976, in 41 FR 46838

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 6 50				
CARPENTERS	5 75				
CEMENT MASONS	5 63				
ELECTRICIANS	4 31				
IRONWORKERS	5 515	15	30		02
LABORERS	3 00				
PAINTERS BRUSH	4 50				
PLUMBERS & PIPEFITTERS	6 00				
ROOFERS	4 00				
SHEET METAL WORKERS	4 25				
TILE SETTERS	5.00				
TRUCK DRIVERS	2.88				
POWER EQUIPMENT OPERATORS:					
Front end loaders	3 95				
Motor graders	3 95				

DECISION NO TX77-4011

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Ed cation and/or Appr Tr
Air Tool Man	$ 3 00				
Asphalt Heaterman	3 40				
Asphalt Raker	3 90				
Batching Plant Scaleman	4 20				
Carpenter	4 00				
Carpenter Helper	3 00				
Concrete Finisher (Paving)	4 25				
Concrete Finisher Helper (Paving)	3 25				
Concrete Finisher (Structures)	4 20				
Concrete Finisher Helper (Structures)	3 45				
Concrete Rubber	3 35				
Electrician	6 00				
Electrician Helper	4 00				
Form Builder (Structures)	4 00				
Form Builder Helper (Structures)	3 25				
Form Setter (Paving and Curb)	3.85				
Form Setter (Structures)	4 25				
Form Setter Helper (Structures)	3 25				
Laborer, Common	2 50				
Laborer, Utility Man	3 00				
Mechanic	4 50				
Mechanic Helper	4 00				
Oiler	3 25				
Serviceman	3 50				
Painter (Structures)	5 25				
Pipelayer	3 35				
Pipelayer Helper	3 00				
Powderman	4 50				
Reinforcing Steel Setter (Structures)	4 00				
Reinforcing Steel Setter Helper	3 00				
Sign Erector	3 25				
Sign Erector Helper	3 00				
Spreader Box Man	4 00				
Swamper	3 30				
Power Equipment Operators:					
Asphalt Distributor	3 95				
Asphalt Paving Machine	4 00				
Broom or Sweeper Operator	3 15				
Bulldozer, 150 HP and Less	4 00				
Bulldozer over 150 HP	4 40				

DECISION NO TX77-4011

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Concrete Paving Curing Machine	$ 3 50				
Concrete Paving Saw	3 50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 20				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4 50				
Crusher or Screening Plant Op	4 15				
Foundation Drill Operator (Crawler Mounted)	3 50				
Foundation Drill Operator (Truck Mounted)	4 35				
Foundation Drill Operator Helper	3 00				
Front End Loader (2½ CY & Less)	4 00				
Front End Loader (Over 2½ CY)	4 25				
Motor Grader Op , Fine Grade	5 00				
Motor Grader Operator	4 25				
Roller, Steel Wheel (Plant-Mix Pavements)	3 00				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 30				
Roller, Pneumatic (Self-Propelled)	3 40				
Scrapers (17 CY and Less)	3 75				
Scrapers (Over 17 CY)	4 00				
Tractor (Crawler Type) 150 HP and Less	3.35				
Tractor (Crawler Type) over 150 HP	3 75				
Tractor (Pneumatic) 80 HP & Less	3 25				
Tractor (Pneumatic) over 80 HP	3.75				
Traveling Mixer	3 60				
Trenching Machine, Light	3 25				
Trenching Machine, Heavy	3 85				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 75				
Truck Drivers:					
Single Axle, Light	3 25				
Lowboy Float	3 35				
Weighman (Truck Scales)	2 50				
Welder	4 15				
Welder Helper	3 25				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Camp, Delta, Fannin, Franklin, Hopkins Lamar & Titus

DECISION NO TX77-4012

DATE: Date of Publication

Supersedes Decision No. TX76 4156, dated October 1, 1976, in 41 FR 43647

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 6 50				
CARPENTERS	4 00				
CEMENT MASONS	4.50				
ELECTRICIANS	4 30				
LABORERS:					
Laborers	2 59				
Mason tenders	3 00				
LATHERS	7 90				
PAINTERS:					
Brush	4 00				
Taper	4 00				
PLASTERERS	7.465	35		50	.03
PLUMBERS	5 64				
ROOFERS	5.00				
SHEET METAL WORKERS	4 77				
SOFT FLOOR LAYERS	5.00				
TILE SETTERS	4 625				

DECISION NO. TX77-4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Heaterman	$ 3 00				
Asphalt Raker	3 50				
Asphalt Shoveler	2 85				
Batching Plant Scaleman	4 15				
Carpenter	4 50				
Carpenter Helper	3 65				
Concrete Finisher (Paving)	4 75				
Concrete Finisher Helper (Paving)	4 10				
Concrete Finisher (Structures)	4 30				
Concrete Finisher Helper (Structures)	3 60				
Concrete Rubber	3 10				
Electrician	5 75				
Form Builder (Structures)	4 00				
Form Builder Helper (Structures)	3 25				
Form Liner (Paving and Curb)	4 05				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	3 25				
Form Setter (Structures)	4 25				
Form Setter Helper (Structures)	3 40				
Laborer Common	2 85				
Laborer, Utility Man	3 40				
Mechanic	4 50				
Mechanic Helper	3 90				
Oiler	3 75				
Serviceman	3 35				
Painter (Structures)	4 50				
Piledriverman	5 25				
Pipelayer	3 25				
Pipelayer Helper	3 00				
Powderman	4 25				
Powderman Helper	3 25				
Reinforcing Steel Setter (Paving)	3 50				
Reinforcing Steel Setter (Structures)	3 75				
Reinforcing Steel Setter Helper	3 25				
Steel Worker (Structural)	4 35				
Spreader Box Man	3 75				
Swamper	3 30				

DECISION NO TX77-4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators:					
Asphalt Distributor	$ 3 50				
Asphalt Paving Machine	4 00				
Broom or Sweeper Operator	3 75				
Bulldozer, 150 HP and Less	4 00				
Bulldozer, over 150 HP	4 50				
Concrete Paving Curing Machine	5 00				
Concrete Paving Finishing Machine	4 50				
Concrete Paving Mixer	4 50				
Concrete Paving Saw	4 50				
Concrete Paving Spreader	4 00				
Paving Sub Grader	4 00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1½ CY)	4 30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4 50				
Crusher or Screening Plant Op	4 35				
Form Loader	3 75				
Foundation Drill Operator (Crawler Mounted)	5 75				
Foundation Drill Operator (Truck Mounted)	5 75				
Foundation Drill Op. Helper	3 90				
Front End Loader (2½ CY & Less)	3 75				
Front End Loader (Over 2½ CY)	4 50				
Mixer (Over 16 CF)	4 50				
Motor Grader Operator, Fine Grade	4 50				
Motor Grader Operator	4 25				
Pump Crete	3 60				
Roller, Steel Wheel (Plant-Mix Pavements)	3 80				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 00				
Roller, Pneumatic (Self-Propelled)	3 00				
Scrapers (17 CY and Less)	3 75				
Scrapers (Over 17 CY)	4 00				

DECISION NO TX77 4012

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
Power Equipment Operators (Cont'd):					
Tractor (Crawler Type) 150 HP and Less	$ 3 60				
Tractor (Crawler Type) over 150 HP	3 75				
Tractor (Pneumatic) 80 HP & Less	3 25				
Tractor (Pneumatic) over 80 HP	3 50				
Traveling Mixer	4 05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 40				
Truck Drivers:					
Single Axle, Light	3 00				
Single Axle, Heavy	3 00				
Tandem Axle or Semitrailer	3,00				
Lowboy-Float	3 00				
Vibrator Man (Hand Type)	2 85				
Weighman (Truck Scales)	3 15				
Welder	4 60				

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Gregg, Harrison, Rusk & Upshur

DECISION NO : TX77-4013

DATE: Date of Publication

Supersedes Decision No TX76-4163, dated October 8, 1976, in 41 FR 44676

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
AIR CONDITIONING MECHANICS	$ 4 00				
BRICKLAYERS	6 00				
CARPENTERS	4 88				
CEMENT MASONS	3 965				
ELECTRICIANS:					
Single or multiple family dwellings or apartments up to and including 3 families	5 50		1%		1%
Over 3 families	7 95	40	1%		1/4%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	4 50				
LABORERS	3 98				
PAINTERS, BRUSH	5 25				
PLASTERERS	7 50				
PLUMBERS & PIPEFITTERS	6 40				
ROOFERS	3 00				
SHEET METAL WORKERS	5 50				
TILE SETTERS	5 00				
TRUCK DRIVERS	3 00				

DECISION NO TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Heaterman	$ 3 00				
Asphalt Raker	3 50				
Asphalt Shoveler	2 85				
Batching Plant Scaleman	4 15				
Carpenter	4 50				
Carpenter Helper	3 65				
Concrete Finisher (Paving)	4 75				
Concrete Finisher Helper (Paving)	4 10				
Concrete Finisher (Structures)	4 30				
Concrete Finisher Helper (Structures)	3 60				
Concrete Rubber	3 10				
Electrician	5 75				
Form Builder (Structures)	4 00				
Form Builder Helper (Structures)	3 25				
Form Liner (Paving and Curb)	4 05				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	3 25				
Form Setter (Structures)	4 25				
Form Setter Helper (Structures)	3 40				
Laborer, Common	2 85				
Laborer Utility Man	3 40				
Mechanic	4 50				
Mechanic Helper	3 90				
Oiler	3 75				
Serviceman	3 35				
Painter (Structures)	4 50				
Piledrivermen	5 25				
pipelayer	3 25				
Pipelayer Helper	3 00				
Powderman	4 25				
Powderman Helper	3 25				
Reinforcing Steel Setter (Paving)	3 50				
Reinforcing Steel Setter (Structures)	3 75				
Reinforcing Steel Setter Helper	3 25				
Steel Worker (Structural)	4 35				
Spreader Box Man	3 75				
Swamper	3 30				

DECISION NO TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators:					
Asphalt Distributor	$ 3 50				
Asphalt Paving Machine	4 00				
Broom or Sweeper Operator	3 75				
Bulldozer, 150 HP and Less	4 00				
Bulldozer, over 150 HP	4 50				
Concrete Paving Curing Machine	5 00				
Concrete Paving Finishing Machine	4 50				
Concrete Paving Mixer	4 50				
Concrete Paving Saw	4 50				
Concrete Paving Spreader	4 00				
Paving Sub Grader	4 00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4 50				
Crusher or Screening Plant Op	4 35				
Form Loader	3 75				
Foundation Drill Operator (Crawler Mounted)	5 75				
Foundation Drill Operator (Truck Mounted)	5 75				
Foundation Drill Operator Helper	3 90				
Front End Loader (2½ CY & Less)	3 75				
Front End Loader (Over 2½ CY)	4 50				
Mixer (Over 16 CF)	4 50				
Motor Grader Op , Fine Grade	4 50				
Motor Grader Operator	4 25				
Pump Crete	3 60				
Roller, Steel Wheel (Plant Mix Pavements)	3.80				
Roller, Steel Wheel (Other Flat Wheel or Tamping)	3 00				
Roller, Pneumatic (Self-Propelled)	3 00				
Scrapers (17 CY and Less)	3 75				
Scrapers (Over 17 CY)	4 00				

DECISION NO TX77-4013

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Tractor (Crawler Type) 150 HP and Less	$ 3 60				
Tractor (Crawler Type) over 150 HP	3 75				
Tractor (Pneumatic) 80 HP & Less	3 25				
Tractor (Pneumatic) over 80 HP	3 50				
Traveling Mixer	4 05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 40				
Truck Drivers:					
Single Axle, Light	3 00				
Single Axle, Heavy	3 00				
Tandem Axle or Semitrailer	3 00				
Lowboy Float	3 00				
Vibrator Man (Hand Type)	2 85				
Weighman (Truck Scales)	3 15				
Welder	4 60				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Howard
DECISION NO : TX77-4014 DATE: Date of Publication
Supersedes Decision No TX76-4164 dated October 8 1976 in 41 FR 44665
DESCRIPTION OF WORK: Building (including Residential) Construction (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 7 00				
CARPENTERS	6 10				
CEMENT MASONS	5.00				
ELECTRICIANS	7 40	30	1%		1/10%
IRONWORKERS STRUCTURAL & ORNAMENTAL	8 23	55	1 00		10
LABORERS:					
Laborers	3 06				
Mason tenders	3 50				
PAINTERS	4 50				
PLUMBERS	4 26				
ROOFERS	4 00				
SHEET METAL WORKERS	5 25				
TILE SETTERS	4 00				
TRUCK DRIVERS	2.50				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

DECISION NO TX77-4014

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Air Tool Man	$ 2 75				
Asphalt Heaterman	3 00				
Asphalt Raker	3.55				
Asphalt Shoveler	2 75				
Batching Plant Scaleman	3 45				
Batterboard Setter	3 65				
Carpenter	4 50				
Carpenter Helper	3 85				
Concrete Finisher (Paving)	4 25				
Concrete Finisher Helper (Paving)	3.25				
Concrete Finisher (Structures)	4 25				
Concrete Finisher Helper (Structures)	3 35				
Electrician	4 00				
Form Builder (Structures)	4 55				
Form Builder Helper (Structures)	3 50				
Form Setter (Paving and Curb)	4 15				
Form Setter Helper (Paving & Curb)	2 75				
Form Setter (Structures)	5 05				
Form Setter Helper (Structures)	2 90				
Laborer, Common	2 50				
Laborer, Utility Man	3 35				
Manhole Builder Brick	3 00				
Mechanic	4 40				
Mechanic Helper	3 00				
Oiler	3 00				
Serviceman	3 60				
Painter (Structures)	3 50				
Pipelayer	3 50				
Pipelayer Helper	2 90				
Powderman	4 00				
Powderman Helper	2 75				
Reinforcing Steel Setter (Structures)	4 05				
Reinforcing Steel Setter Helper	3 75				
Spreader Box Man	3 25				
power Equipment Operators:					
Asphalt Distributor	3 70				
Asphalt Paving Machine	3 50				
Broom or Sweeper Operator	3 25				
Bulldozer 150 HP and Less	3 50				
Bulldozer over 150 HP	4 00				

DECISION NO TX77-4014

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	$ 4 10				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over	4 95				
Crusher or Screening Plant Op	3 50				
Elevating Grader	4 10				
Foundation Drill Operator (Crawler Mounted)	4 60				
Foundation Drill Operator (Truck Mounted)	4 90				
Front End Loader (2½ CY & Less)	3 50				
Front End Loader (Over 2½ CY)—	4 00				
Motor Grader Operator, Fine Grade	4 70				
Motor Grader Operator	4 25				
Roller Steel Wheel (Plant-Mix Pavements)	3 50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 00				
Roller, Pneumatic (Self-Propelled)	3 00				
Scrapers (17 CY and Less)	3 80				
Scrapers (Over 17 CY)	4 15				
Self-Propelled Hammer	3 50				
Side Boom	3 50				
Tractor (Crawler Type) 150 HP and Less	3 10				
Tractor (Crawler Type) over 150 HP	3 50				
Tractor (Pneumatic) 80 HP & Less	3 00				
Tractor (Pneumatic) over 80 HP	3 25				
Traveling Mixer	2 75				
Trenching Machine, Light	3 70				
Trenching Machine, Heavy	3 80				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 50				
Truck Drivers:					
Single Axle, Light	3 00				
Single Axle, Heavy	3.00				
Tandem Axle or Semitrailer	3 10				
Lowboy-Float	3 35				
Winch	3 40				
Weighman (Truck Scales)	2 50				
Welder	4 00				

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Smith Van Zandt & Wood
DECISION NO : TX77-4015 DATE: Date of Publication
Supersedes Decision No TX76-4165 dated October 8, 1976, in 41 FR 44678
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 6 00				
CARPENTERS	5 00				
CEMENT MASONS	4 75				
ELECTRICIANS	5 25				
GLAZIERS	4 20				
IRONWORKERS STRUCTURAL & ORNAMENTAL	4 94				
LABORERS	3 00				
LATHERS	5 80				
PAINTERS, BRUSH	4 50				
PLASTERERS	6 00				01
PLUMBERS & PIPEFITTERS	4 10				
ROOFERS	4 50				
SHEET METAL WORKERS	4 00				
TILE SETTERS	4 125				
TRUCK DRIVERS	2 62				

DECISION NO TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Heaterman	$ 3 00				
Asphalt Raker	3 50				
Asphalt Shoveler	2 85				
Batching Plant Scaleman	4 15				
Carpenter	4 50				
Carpenter Helper	3 65				
Concrete Finisher (Paving)	4 75				
Concrete Finisher Helper (Paving)	4 10				
Concrete Finisher (Structures)	4 30				
Concrete Finisher Helper (Structures)	3 60				
Concrete Rubber	3 10				
Electrician	5 75				
Form Builder (Structures)	4 00				
Form Builder Helper (Structures)	3 25				
Form Liner (Paving and Curb)	4 05				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	3 25				
Form Setter (Structures)	4 25				
Form Setter Helper (Structures)	3 40				
Laborer, Common	2 85				
Laborer Utility Man	3 40				
Mechanic	4 50				
Mechanic Helper	3 90				
Oiler	3 75				
Serviceman	3 35				
Painter (Structures)	4 50				
Piledrivermen	5 25				
Pipelayer	3 25				
Pipelayer Helper	3 00				
Powderman	4 25				
Powderman Helper	3 25				
Reinforcing Steel Setter (Paving)	3 50				
Reinforcing Steel Setter (Structures)	3 75				
Reinforcing Steel Setter Helper	3 25				
Steel Worker (Structural)	4 35				
Spreader Box Man	3 75				
Swamper	3 30				

DECISION NO TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3 50				
Asphalt Paving Machine	4 00				
Broom or Sweeper Operator	3 75				
Bulldozer, 150 HP and Less	4 00				
Bulldozer, over 150 HP	4 50				
Concrete Paving Curing Machine	5 00				
Concrete Paving Finishing Machine	4 50				
Concrete Paving Mixer	4 50				
Concrete Paving Saw	4 50				
Concrete Paving Spreader	4 00				
Paving Sub Grader	4 00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over	4 50				
Crusher or Screening Plant Op	4.35				
Form Loader	3 75				
Foundation Drill Operator (Crawler Mounted)	5 75				
Foundation Drill Operator (Truck Mounted)	5 75				
Foundation Drill Op. Helper	3 90				
Front End Loader (2½ CY & Less)	3 75				
Front End Loader (Over 2½ CY)	4 50				
Mixer (Over 16 CF)	4 50				
Motor Grader Op , Fine Grade	4 50				
Motor Grader Operator	4 25				
Pump Crete	3 69				
Roller, Steel Wheel (Plant Mix Pavements)	3 80				
Roller, Steel Wheel (Other-Flat Wheel or Tarping)	3 00				
Roller, Pneumatic (Self-Propelled)	3 00				
Scrapers (17 CY and Less)	3 75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3 60				
Tractor (Crawler Type) over 150 HP	3 75				

DECISION NO TX77-4015

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Tractor (Pneumatic) 80 HP & Less	$ 3 25				
Tractor (Pneumatic) over 80 HP	3 50				
Traveling Mixer	4 05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 40				
Truck Drivers:					
Single Axle, Light	3 00				
Single Axle, Heavy	3 00				
Tandem Axle or Semitrailer	3 00				
Lowboy-Float	3 00				
Vibrator Man (Hand Type)	2 85				
Weighman (Truck Scales)	3 15				
Welder	4.60				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Wichita
DECISION NO : TX77 4016 DATE: Date of Publication
Supersedes Decision No TX76-4166 dated October 8, 1976 in 41 FR 44667
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS	$ 7 00				
CARPENTERS	6 00				
CEMENT MASONS	4.50				
ELECTRICIANS	5 55				
LABORERS:					
Laborers	3 00				
Mason tenders	3 55				
PAINTERS, BRUSH	4 32				
PLUMBERS & PIPEFITTERS	5 53				
ROOFERS	4 00				
SHEET METAL WORKERS	5 30				
SOFT FLOOR LAYERS	5 00				

DECISION NO TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Heaterman	$ 3 50				
Asphalt Raker	3 90				
Batching Plant Scaleman	4 55				
Carpenter	4 70				
Carpenter Helper	3 75				
Concrete Finisher (Paving)	4 30				
Concrete Finisher Helper (Paving)	3 00				
Concrete Finisher (Structures)	4 80				
Concrete Finisher Helper (Structures)	3 90				
Form Builder (Structures)	4 70				
Form Builder Helper (Structures)	3 75				
Form Liner (Paving and Curb)	4 00				
Form Setter (Paving and Curb)	4 00				
Form Setter Helper (Paving & Curb)	3 65				
Form Setter (Structures)	5 05				
Form Setter Helper (Structures)	4 40				
Laborer Common	3 00				
Laborer, Utility Man	3 30				
Manhole Builder Brick	3 85				
Mechanic	4 85				
Mechanic Helper	3 50				
Oiler	4 00				
Serviceman	3 90				
Painter (Structures)	5 00				
Pipelayer	3 75				
Pipelayer Helper	3 00				
Powderman	4 40				
Reinforcing Steel Setter (Paving)	4 35				
Reinforcing Steel Setter (Structures)	4 75				
Reinforcing Steel Setter Helper	3 05				
Sign Erector	3 25				
Spreader Box Man	3 70				
Swamper	3 45				
Power Equipment Operators:					
Asphalt Distributor	4.35				
Asphalt Paving Machine	4 65				
Broom or Sweeper Operator	3 25				
Bulldozer, 150 HP and Less	3 75				
Bulldozer, over 150 HP	4 50				
Concrete Paving Curing Machine	3 75				

DECISION NO: TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators (Cont'd):					
Concrete Paving Finishing Machine	$ 4 80				
Concrete Paving Form Grader	3 75				
Concrete Paving Mixer	4 80				
Concrete Paving Saw	4 30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4 50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5 05				
Crusher or Screening Plant Op	4 90				
Foundation Drill Operator (Crawler Mounted)	5 35				
Foundation Drill Operator (Truck Mounted)	5 85				
Foundation Drill Op. Helper	3 90				
Front End Loader (2½ CY & Less)	4 00				
Front End Loader (Over 2½ CY)	4 70				
Mixer (Over 16 CF)	4 60				
Motor Grader Op , Fine Grade	5 05				
Motor Grader Operator	4 65				
Roller, Steel Wheel (Plant-Mix Pavements)	3.90				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3 80				
Roller, Pneumatic (Self-Propelled)	3 50				
Scrapers (17 CY and Less)	4 05				
Scrapers (Over 17 CY)	4 50				
Side Boom	4 00				
Tractor (Crawler Type) 150 HP and Less	3 60				
Tractor (Crawler Type) over 150 HP	4 00				
Tractor (Pneumatic) 80 HP & Less	3 55				
Tractor (Pneumatic) over 80 HP	3 90				
Traveling Mixer	4 35				
Trenching Machine, Light	4 00				
Trenching Machine, Heavy	4 00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3 65				

DECISION NO TX77-4016

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck Drivers:					
Single Axle, Light	$ 3 00				
Single Axle, Heavy	3 50				
Tandem Axle or Semitrailer	3 00				
Lowboy-Float	3 55				
Transit Mix	3 50				
Winch	3 25				
Vibrator Man (Hand Type)	3 05				
Weighman (Truck Scales)	3 00				
Welder	5 05				

SUPERSEDEAS DECISION

STATE: Utah COUNTIES: Statewide
DECISION NUMBER: UT77-5006 DATE : Date of Publication
Supersedes Decision No UT76-5097 dated November 5, 1976, in 41 FR 49003
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$ 10 56	52	$ 1 17		
BOILERMAKERS	11 45	75	1 00	50	02
BRICKLAYERS	10 36	45	32+ 10		09
CARPENTERS:					
Building Construction:					
Carpenters	9 25	50	60		03
Saw Operators; Carpenters handling creosote materials	9 50	50	60		03
Millwrights	9 85	50	60		03
Piledrivermen	11 63	50	60		03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities: Brigham City, Cedar City Kanab Logan, Moab, Monticello, Ogden Price, Provo Richfield, St George Salt Lake City, Vernal:					
Carpenters	9 25	50	60		03
Saw Operators; Carpenters handling creosote materials	9 50	50	60		03
Millwrights	9 85	50	60		03
Piledrivermen	11 63	50	60		03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Carpenters	10 25	50	60		03
Saw Operators; Carpenters handling creosote materials	10 50	50	60		03
Millwrights	9 85	50	60		03
Piledrivermen	11 63	50	60		03

DECISION NO UT77-5006

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CARPENTERS: (Cont'd)					
Heavy and Highway Construction (Cont d)					
Zone 3: Area over 60 miles from the above-named Cities:					
Carpenters	$ 11 25	.50	60		03
Saw Operators; Carpenters handling creosote materials	11 50	50	60		03
Millwrights	9 85	50	60		03
Piledrivermen	11 63	50	60		03
CEMENT MASONS:					
Building Construction:					
Cement Masons	9 01	50	60		03
Machine Operator; Mastic Floor Materials	9 14	50	60		03
Swing Scaffold; Swing Stage	9.26	50	60		03
Heavy and Highway Construction:					
Zone 1: Area 0 to 40 miles from the following Cities: Brigham City, Cedar City Kanab Logan, Moab Monticello, Ogden Price Provo, Richfield St George, Salt Lake City, Vernal:					
Cement Masons	9 01	50	60		03
Machine Operator; Mastic Floor Materials	9 14	50	60		03
Swing Scaffold, Swing Stage	9 26	50	60		.03
Zone 2: Area 40 to 60 miles from the above-named Cities:					
Cement Masons	10 01	50	60		03
Machine Operator; Mastic Floor Materials	10 14	.50	60		03
Swing Scaffold; Swing Stage	10 26	50	60		03
Zone 3: Area over 60 miles from the above-named Cities:					
Cement Masons	11.01	50	60		03
Machine Operator; Mastic Floor Materials	11 14	50	60		03
Swing Scaffold; Swing Stage	11 26	50	60		03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DRYWALL INSTALLERS:					
Taping, finishing and texturing (hand or machine)	$ 9 54	51	30		03
ELECTRICIANS:					
North section of Utah - Box Elder, Cache, Davis County (north of 41st Parallel), Morgan, Rich, Weber Counties:					
Zone 1: That area 10 miles on either side of Interstate Hwy #15, commencing on the south at the 41st Parallel in Davis County, continuing north to Hwy #91 - Interstate 15 junction south of Brigham City; at this point go east and north through Logan and continue north to the 42nd Parallel in Cache County on Hwy #91:					
Electricians; Technicians	10 50	45	1%+ 50		8/10%
Cable Splicers	10 75	45	1%+ 50		8/10%
Zone 2: That area not included in Zone 1 that lies east of 112°20' longitude in Box Elder County and that area lying west of 111°35', north of the 41st Parallel and south of the 40th Parallel in Cache, Morgan, Weber Counties:					
Electricians; Technicians	11 00	45	1%+ 50		8/80%
Cable Splicers	11 25	45	1%+ 50		8/10%
Zone 3: All remaining Area north of 41st Parallel:					
Electricians; Technicians	12 50	45	1%+ 50		8/10%
Cable Splicers	12 75	45	1%+ 50		8/10%
In the above areas on any job or project not exceeding $35,000 electrical, labor and material including, Zone 1 rates shall apply					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ELECTRICIANS: Cont'd)					
South section of Utah (Remaining Counties):					
Zone 1: Davis County (south of 41st Parallel); Salt Lake County; Tooele County (northeast corner beginning at a point where the township line between Township 3 south and Township 4 south, Salt Lake Base Meridian, intersects the east boundary line of Tooele County and thence west along said township line to the southwest corner of Section 32, Township 3 south, Range 4 west, Salt Lake Base Meridian, thence north to the northwest corner of Section 17 of Township 3 south, Range 4 west, thence west to longitude 112.5°, thence north along the line of longitude 112.5° to the north line of Tooele County); Utah County (north of 40th Parallel):					
Area A: Ten miles either direction (east or west) from Interstate Hwy #15), bounded on the north by the 41st Parallel and on the south by the 40th Parallel:					
Electricians; Technicians	$ 10 50	45	1%+ 50		8/10%
Cable Splicers	10 75	45	1%+ 50		8/10%
Area B: The balance of Zone 1 that lies in Davis, Salt Lake, Utah Counties:					
Electricians; Technicians	11 25	45	1%+ 50		8/10%
Cable Splicers	11 50	45	1%+ 50		8/10%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ELECTRICIANS: (Cont d)					
South section of Utah (Remaining Counties): (Cont d)					
Area C: That portion of the remainder of Zone 1 that lies in Tooele County:					
Electricians; Technicians	$ 12 00	45	1%+ 50		8/10%
Cable Splicers	12 25	45	1%+ 50		8/10%
Zone 2: Remainder of Counties and all portions of Counties not included in Zones 1 and 2 of south section of Utah:					
Electricians; Technicians	13 25	45	1%+ 50		8/10%
Cable Splicers	13 50	45	1%+ 50		8/10%
ELEVATOR CONSTRUCTORS	10 03	545	35	3%+a	02
ELEVATOR CONSTRUCTORS HELPERS	7 02	545	35	3%+a	02
ELEVATOR CONSTRUCTORS' HELPERS (PROB)	5 015				
GLAZIERS:					
Iron, Washington Counties	12 88	35	40		05
Remaining Counties	8 34	51	20	b	
IRONWORKERS:					
Fence Erectors; Ornamental; Reinforcing; Structural	10 05	55	1 00		10
LATHERS	8 88	50	50		01
LINE CONSTRUCTION WORKERS:					
Groundman	7 19	35	1%		3/4%
Line Equipment Serviceman	8 56	35	1%		3/4%
Line Equipment Mechanic:					
Base Shop	8 56	35	1%		3/4%
Right-of-way	9 14	35	1%		3/4%
Line Equipment Operators	8 70	35	1%		3/4%
Linemen	9 65	35	1%		3/4%
Cable Splicers	10 61	35	1%		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
MARBLE SETTERS	$ 10 35	20			
PAINTERS:					
Area north of the 41st Parallel:					
Brush; Roller	8 19	51	50		03
Spray; Sandblaster; Steeplejack	8 44	51	50		03
Spray (swing stage); Sandblaster (swing stage)	8 64	51	50		03
Remaining part of State:					
Brush; Roller	9 20	51	30		02
Brush (swing stage); Brush (steel and bridge); Spray Sandblaster; Steeplejack	9 50	51	30		02
Spray (swing stage); Spray (steel and bridge); Sandblaster (swing stage)	9 75	51	30		02
Wallcovering Hanger	9 45	51	30		02
PLASTERER TENDERS	8 40	35	35		
PLASTERERS	9 40	50	60		01
PLUMBERS; Pipefitters:					
Zone 1: Within a 15 mile radius from the center of each City namely Salt Lake City, Ogden and Provo Utah	10 10	51	1 00		06
Zone 2: Zone 1 plus 15 miles	10 40	51	1 00		06
Zone 3: Zone 2 plus 15 miles	10 75	51	1 00		06
Zone 4: Zone 3 plus 15 miles	12 10	51	1 00		06
Zone 5: All areas beyond Zone 4	12 60	51	1 00		06
REFRIGERATION & AIR CONDITIONING:					
Under 50 tons	8 55	51	75		04
50 tons and over	9 15	51	75		04
ROOFERS	8 59	57	35		
SHEET METAL WORKERS	10 19	54	59		08
SOFT FLOOR LAYERS	8 15	51	12		
SPRINKLER FITTERS	10 43	60	90		08
TERRAZZO WORKERS	10 35	20			
TILE SETTERS	10 35	20			
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES

a Employer contributes 4% of basic hourly rate for 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit 6 Paid Holidays: A through F

b Employees who have been employed for a period of 1 year shall have 3 weeks vacation with pay. Should a holiday listed below occur within a employee's vacation period he shall be allotted an additional day's vacation Any employee who has served continuously with one company for 12 or more years as of October 31, 1969, will continue to receive an additional week's vacation For those employees who have voluntarily quit or are terminated prior to working 12 months, there will be accumulated for such employee by each individual employer for all straight time hours worked, 6% of his gross income for such straight time hours upon termination of such employment

HOLIDAYS:
Straight time shall be paid when the following holidays are worked: New Year's Day; President's Day; Memorial Day; Independence Day; Pioneer Day; Labor Day; Thanksgiving Day and Christmas Day. Other than temporary employees shall be paid for all such holidays regardless upon which day in the week the holiday shall fall When work is performed on a holiday, an additional straight time rate shall be paid No work will be performed on Labor Day

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS: Building					
Group 1	$ 7 10	35	35		03
Group 2	7 23	35	35		03
Group 3	7 35	35	35		03
Group 4	7 60	35	35		03
Group 5	8 10	35	35		03
POWER EQUIPMENT OPERATORS: Steel Erection					
Group 1	9 22	75	1 615	85	14
Group 2	9 60	75	1 615	85	14
Group 3	10 61	75	1 615	85	14
Group 4	10 75	75	1 615	85	14
Group 4-A	11 04	75	1 615	85	14
Group 5	11 52	75	1 615	85	14
Group 6	11 93	75	1 615	85	14
Group 6-A	12 49	75	1 615	85	14
Group 7	13 47	75	1 615	85	14
Piledriving					
Group 1-A	8 78	75	1 615	85	14
Group 1-B	9 11	75	1 615	85	14
Group 1-C	9 26	75	1 615	85	14
Group 2-A	7 89	75	1 615	85	14
Group 2-B	10 10	75	1 615	85	14
Group 3	10 40	75	1 615	85	14
Group 3-A	10 78	75	1 615	85	14
Group 4	11 33	75	1 615	85	14
Group 5	11 48	75	1 615	85	14
Group 6	12 49	75	1 615	85	14

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS*						
Heavy and Highway	AREA 1	AREA 2				
Group 1	$ 7 10	$ 8 60	35	35		.04
Group 2	7 23	8 73	35	35		04
Group 3	7 35	8 85	35	35		04
Group 4	7 60	9 10	35	35		04
Group 5	8 10	9 60	35	35		04
Tunnel and Shaft Work						
Group 1	7 25	8 75	35	35		
Group 2	7 35	8 85	35	35		04
Group 3	7 55	9 05	35	35		04
Group 4	8 00	9 50	35	35		04
*LABORERS - AREA DEFINITION: See Area Definition - following Truck Drivers						
POWER EQUIPMENT OPERATORS:						
Group 1	7 76	8 76	75	1 615	85	14
Group 2	8 04	9 04	75	1 615	85	14
Group 3	8 39	9 39	75	1 615	85	14
Group 4	8 57	9 57	75	1 615	85	14
Group 4-A	8 68	9.68	75	1 615	85	14
Group 5	8 68	9168	75	1 615	85	14
Group 6	9 14	10.14	75	1 615	85	14
Group 7	9 29	10 29	75	1.615	85	14
Group 7-A	9 40	10 40	75	1 615	85	14
Group 8	9 70	10 70	75	1 615	85	14
Group 8-A	9 76	10.76	75	1 615	85	14
Group 9	9 82	10 82	75	1 615	85	14
Group 10	9 98	10 98	75	1 615	85	14
Group 11	10 42	11 41	75	1 615	85	14
Group 11-A	11 38	12 38	75	1 615	85	14
Group 11-B	11 83	12 83	75	1 615	85	14
Group 12	11 99	12 99	75	1 615	85	14
*POWER EQUIPMENT OPERATORS - AREA DEFINITIONS: See Area Definition - following Truck Drivers						

LABORERS
Building

Group 1: General Laborer (all classifications not included in Groups 2, 3, 4 5)

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete pump (head hoseman); Signalman and Dumpman on Concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e g , compressor compactors, jackhammer vibrator concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser instrument operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Track and similar Drills

Group 5: Powderman

LABORERS
Heavy and Highway

Group 1: General Laborers (all classifications not included in Groups 2, 3, 4, or 5)

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete Pump Head Hoseman; Signalman and Dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e g , compressor, compactors, jackhammer vibrator concrete saw, chain saw and concrete cutting torch); Pipelayer; Laser Instrument Operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Track and similar Drills

Group 5: Powderman

LABORERS
Tunnel and Shaft Work

Group 1: Underground Laborers

Group 2: Brakeman; Chucktender; Dumpman; Powderman Helper; Puddler; Nipper; Tapman; Vibrator; Screedmen

Group 3: Cutting Machine Operator; Drill Doctor; Finisher; Gunite Gunman; Miner; Powder Makeup Man; Spader and Tugger; Steelman; Gunite Groundman; Gunite Nozzleman; Gunite Rodman; Concrete Head Hoseman

Group 4: Shifter

POWER EQUIPMENT OPERATORS

Group 1: Repairman Helper

Group 2: Asphalt Plant Fireman; Assistant to Engineer; Brakeman - Locomotive; Elevator Operator; Fireman; Hydraulic Monitor; Material Loader or Conveyor Operator; Partsman - Field; Repairman Helper - Field

Group 3: Air Compressor Operator; Concrete Mixer Operator (skip-type); Concrete Pump or Pumpcrete Gun Operator; Engineer, Dinky Operator; Generator Operator (100 KW or over); Mixer Box Operator or similar (concrete or asphalt plant continuous mix); Pump Operator; Screedman; Self-propelled, automatically applied concrete curing machine (on street, highways, airports and canals); Truck Crane Oiler; Boxman, Asphalt Plant

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper - multiple-purpose; Front End Loader (up to and including 1 cu yd struck MRC); Hoist Operator - 1 drum; Line Master; Slip Form Pumps

Group 4-A: Slurry Seal Machine or similar

Group 5: Air Compressor Operator (2 or more compressors); Batch Operator (asphalt plant); Motorman; Pavement Breaker Operator (Esco and similar type); Shuttlecar; Signalman; Small rubber-tired tractor; Small self-propelled pneumatic rollers; Towermobile Operator; Welding Machine (2 or more); Lube and Service Engineer (mobile and grease rack); Concrete Conveyor (building site)

Group 6: A-Frame Truck and Tugger Hoist; Concrete Saws (self-propelled units on streets, highways, airports and canals); Engineer-locomotive; Fork Lift (construction jobsite); Kolman Loader (and similar); Loader Operator (over 1 cu yd up to and including 2 cu yds struck MRC); Maginnis Internal Full Slab Vibrator (on airports, highways, canal and warehouses); Mixermobile Operator; Pipe Bending Machine Operator; Pipe Cleaning Machine; Pipe Wrapping Machine; Power Jumbo Operator (setting slip forms, etc., in tunnels); Road Mixing Machine Operator; Ross Carrier or similar type; Small rubber-tired tractor (with attachments, including backhoe); Small rubber-tired Trenching Machine; Small Tractor with boom; Surface Heater (self-propelled); Gradesetter

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Bridge Crane; Chip Box Spreader (Flaherty-type and similar); Concrete Mixer Operator (paving or batch plant); Deck Engineer (marine); Drilling Machine Operator (well or diamond); Dual Drum Mixers; Elevating Grader Operator; Fuller Kenyon Pump and similar types; Heavy Duty Rotary Drill Rigs (such as Quarry Master, Joy Drills or equal); Hoist Operator - 2 drums; Lull High Lift (40 ft or similar); Mechanical Finisher Operator (asphalt or concrete); Mine or Shaft Hoist; No-Joint Pipe Laying Machine; Pavement Breaker; Pavement Breaker with Compressor Combination; Pavement Breaker, truck mounted, compressor combination; Refrigeration Plant; Roller Operator or self-propelled Compactor; Self-propelled Pipeline, Wrapping Machine (Perault, CRC, or similar types); Slusher Operator; Tractor Compressor Drill combination; Tractor Operator (Sheep's foot and compacting equipment); Trenching Machine; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Mechanical Burm, Curb and/or Curb and Gutter Machine, Concrete or Asphalt; Self-propelled Compactor with or without dozer; Drilling and Boring Machinery, Horizontal and Vertical (not to apply to waterliners, wagon drills or jackhammers); Self-propelled Compactor (with multiple-propulsion power units)

Group 7-A: Side Boom Operator; Tractor Operator (Bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, up to and including D-7 or similar)

Group 8: Chicago Boom (including Stiff Leg and Shear Pole); Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Do-mor Loader and Adams Elegrader; Euclid Loader and similar types; Koehring Skooper (or similar) (up to 5 cu yds struck MRC); Loader Operator (over 2 cu yds up to and including 5 cu yds struck MRC); Mechanical Trench Shield; Mucking Machine Operator; Rubber-tired Scrapers (under 35 cu yds struck MRC); Saurman-type Dragline (under 5 cu yds struck MRC); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less MRC); Self-propelled Elevating Grade Plane; Soil Stabilizer (P&H or equal); Subgrader (automatic subgrader - fine grader); Tri-batch Paver; Tunnel Mole (or similar); Asphalt Plant Engineer; Engineer crushing plant; Combination Backhoe and Loader 0/4 yds and over struck MRC)

Group 8-A: Heavy Duty Repairman or Welder; Tractor Operator (bulldozer or tractor-drawn scraper or drag-type shovel or boom attachment, larger than D-7 or similar)

Group 9: Combination Mixer and Compressor (gunite); Highline Cableway Signalman; Motor Patrol; Tower Crane (Linden-type or similar designs and capacity)

POWER EQUIPMENT OPERATORS (Cont d)

Group 10: D W 10, 20, etc (Tandem Scrapers); Highline Cableway Operator; Lift Slab Machine (Vagtborg and similar types); Loader Operator (over 5 cu yds up to and including 12 cu yds struck MRC); Locomotive (over 100 tons) (single or multiple units); Prestress Wire Wrapping Machine; Saurman-type Dragline (5 cu yds and over struck MRC); Tractor (tandem scrapers); Universal Equipment Operator (shovel, backhoe, dragline derrick, derrick barge, clamshell, crane, gradeall, etc) (up to and including 5 cu yds struck MRC); Self-propelled Boom-type lifting device (center mount) (over 10 tons)

Group 11: Automatic Concrete Slip Form Paver; Koehring Skooper (or similar) (5 cu yds and over struck MRC); Multiple Propulsion power unit eatch movers (up to and including 75 cu. yds struck MRC); Power Equipment with Shovel-type controls (over 5 cu yds up to and including 7 cu yds struck MRC); Remote-controlled Cranes and Derricks; Rubber-tired Scrapers (35 cu yds and over struck MRC); Slip Form Paver (concrete or asphalt); Tandem Tractors; Tower Cranes Mobile

Group 11-A: Loader Operator (over 12 cu yds struck MRC, up to 18 cu yds MRC); Multi-purpose earth moving machines (2 or more scrapers) (over 75 cu yds struck MRC); Power Shovels and Draglines (over 7 cu yds struck MRC)

Group 11-B: Operator of Helicopter (when used in erection work); Loader (18 cu yds and over)

Group 12: Cranes (over 125 tons)

POWER EQUIPMENT OERATORS
Steel Erection

Group 1: Assistant to Engineer (oiler)

Group 2: Compressor Operator; Generator gasoline or diesel driven (100 KW or over) (structural steel or tank erection only); Assistant to Engineer (truck crane oiler)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (structural steel or tank erection only); Deck Engineer; Signalman (using mechanical equipment); Fork Lift

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy Duty Repairman - Welder

POWER EQUIPMENT OPERATORS (Cont d)
Steel Erection (Cont d)

Group 5: Dual-purpose A-Frame or Boom Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons MRC or less); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less MRC); Single Drum Hoist; Tugger Hoist

Group 6: Crawler Cranes and Trucks Cranes (over 15 tons MRC); Derricks; Highline Cableway; Gantry Rider (or similar equipment); Self-propelled Boom-type Lifting Device (center mount) (over 10 tons); Tower Cranes Mobile (including rail mounted); Universal Liebher and Tower Cranes (and similar types); 2 or more drum Hoist

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

POWER EQUIPMENT OPERATORS
Piledriving

Group 1-A: Assistant to Engineer (deckhand fireman oiler)

Group 1-B: Compressor Operator

Group 1-C: Assistant to Engineer (truck crane oiler)

Group 2-A: Operator of Tugger-Hoist (hoisting materials only)

Group 2-B: Compressor Operator (over 2); Generators; Pumps; Welding Machines (powered other than by electricity)

Group 3: Deck Engineer; Fork Lift Operator; A-Frame; Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less MRC)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and derrick barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) up to and including 1 cu yd rating; Self-propelled Boom-type lifting device (center mount) (over 10 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) over 2 cu yd rating; Operator of Crane (with steam flash boiler, pump or compressor attached); Operator of steam powered Crwaler or Universal-type Driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving Work)

Group 6: Cranes (over 125 tons)

TRUCK DRIVERS:*	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
Dump Trucks - Water level Capacity (bottom, end and side) (including Dumpster Trucks, Euclid type Trucks, Turnawagons, Turnarockers and Dumpcrete)						
Less than 8 yards	$ 8.00	$ 9.50	.54	.70	$1.00	.10
8 yards and less than 14 yards	8.15	9.65	.54	.70	1.00	.10
14 yards and less than 35 yards	8.30	9.80	.54	.70	1.00	.10
35 yards and less than 55 yards	8.50	10.00	.54	.70	1.00	.10
55 yards and less than 75 yards	8.70	10.20	.54	.70	1.00	.10
75 yards and less than 95 yards	8.90	10.40	.54	.70	1.00	.10
95 yards and less than 105 yards	9.10	10.60	.54	.70	1.00	.10
105 yards and less than 130 yards	9.22	10.72	.54	.70	1.00	.10
All 130 cu. yds. and over to be paid one-half cent ($.005) per cu. yds. capacity per hour in addition to rate for 105 yards and less than 130 yards						
Flat Rack Trucks, Bulk Cement Trucks, Tansport Trucks, Semi-Trailer (carrying capacity):						
Pickup	7.825	9.325	.54	.70	1.00	.10
Less than 10 tons	7.90	9.40	.54	.70	1.00	.10
10 tons and less than 15 tons	8.05	9.55	.54	.70	1.00	.10
15 tons and less than 20 tons	8.15	9.65	.54	.70	1.00	.10
20 tons and over	8.30	9.80	.54	.70	1.00	.10
Transit Mix Trucks:						
4½ yards capacity and less	8.025	9.525	.54	.70	1.00	.10
Over 4½ yards to and including 6½ yards capacity	8.125	9.625	.54	.70	1.00	.10
Over 6½ yards capacity	8.225	9.725	.54	.70	1.00	.10
Concrete Pumping Trucks	8.225	9.725	.54	.70	1.00	.10

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and or Appr. Tr
Water, Fuel and Oil Tank Trucks:						
Less than 1200 gallons	$ 7.875	$ 9.375	.54	.70	$1.00	.10
1200 gallons to less than 2500 gallons	8.00	9.50	.54	.70	1.00	.10
2500 gallons to less than 4000 gallons	8.15	9.65	.54	.70	1.00	.10
4000 gallons to less than 6000 gallons	8.45	9.95	.54	.70	1.00	.10
6000 gallons to less than 10,000 gallons	8.70	10.20	.54	.70	1.00	.10
10,000 gallons to less than 15,000 gallons	8.95	10.45	.54	.70	1.00	.10
15,000 gallons to less than 20,000 gallons	9.20	10.70	.54	.70	1.00	.10
20,000 gallons to less than 25,000 gallons	9.45	10.95	.54	.70	1.00	.10
25,000 gallons and over	9.70	11.20	.54	.70	1.00	.10
Oiler Spreader Operator (on single man operation where boot man is not required)	8.70	10.20	.54	.70	1.00	.10
Construction Job Servicemen:						
Telescopic Manlift Truck	8.20	9.70	.54	.70	1.00	.10
Fork Lift (under 6 tons) and Straddle Truck	8.20	9.70	.54	.70	1.00	.10
Truck Driver Helper	7.775	9.275	.54	.70	1.00	.10
Chauffeurs	7.775	9.275	.54	.70	1.00	.10
Warehousemen (Counter Clerk)	7.95	9.45	.54	.70	1.00	.10
Washers	7.975	9.475	.54	.70	1.00	.10
Tireman and Greaser	8.40	9.90	.54	.70	1.00	.10
Gas Station Attendants	7.825	9.325	.54	.70	1.00	.10
Fork Lift (over 6 tons)	8.30	9.80	.54	.70	1.00	10
Teamster Mechanic	9.01	10.51	.54	.70	1.00	.10
Teamster Mechanic Helper	8.76	10.26	.54	.70	1.00	10
Teamster Welder	9.01	10.51	.54	.70	1.00	.10
Teamster Driving two Horses	8.775	10.275	.54	.70	1.00	.10
Teamster Driving three or more horses	8.875	10.375	.54	.70	1.00	10
Sweeper or Vacuum Truck	8.15	9.65	.54	.70	1.00	10

*TRUCK DRIVERS - AREA DEFINITION: See "Area Definition" - following this page.

AREA DEFINITIONS

Laborers
(Heavy and Highway Construction)
Power Equipment Operators
Truck Drivers

Area 1: All areas included in the description defined below which is based upon township and range lines as referenced to the Salt Lake City Base and Meridian:

Commencing at the intersection of the Utah/Nevada border and the Southerly line ot township 35 south;
Thence easterly to the S E corner of township 35 south, range 17 west;
Thence northerly to the S E corner of township 34 south, range 17 west;
Thence easterly to the S E corner of township 34 south, range 16 west;
Thence northerly to the S E corner of township 30 south, range 16 west;
Thence easterly to the S E corner of township 30 south, range 15 west;
Thence northerly to the S E corner of township 25 south, range 15 west;
Thence easterly to the S E corner of township 25 south, range 14 west;
Thence northerly to the S E corner of township 24 south, range 14 west;
Thence easterly to the S E corner of township 24 south, range 13 west;
Thence northerly to the S E corner of township 23 south, range 13 west;
Thence easterly to the S E corner of township 23 south, range 12 west;
Thence northerly to the S E corner of township 18 south, range 12 west;
Thence easterly to the S E corner of township 18 south, range 11 west;
Thence northerly to the S E corner of township 16 south, range 11 west;
Thence easterly to the S E corner of township 16 south, range 10 west;
Thence northerly to the S E corner of township 15 south range 10 west;
Thence easterly to the S E corner of township 15 south range 9 west;
Thence northerly to the S E corner of township 14 south, range 9 west;
Thence easterly to the S E corner of township 14 south, range 8 west;
Thence northerly along the easterly line of range 8 west crossing the Salt Lake Base Line to the intersection of the easterly line of range 8 west and the northerly border of Utah;
Thence easterly along the northerly border of Utah crossing the Salt Lake Meridian to the Utah/Idaho/Wyoming border;
Thence southerly along the Utah/Wyoming border;
Thence easterly along the Utah/Wyoming border to the intersection of the Utah/Wyoming border and Longitude 111 degrees west;
Thence southerly along Longitude 111 degrees west crossing the Salt Lake Base Line to the intersection of Longitude 111 degrees west and the southerly line of township 4 south;
Thence easterly along the southerly line of township 4 south to the S E corner of township 4 south range 17 east;
Thence northerly to the S E corner of township 1 south range 17 east;
Thence easterly along the southerly line of township 1 south to the intersection of the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the intersection of the Utah/Colorado border and the southerly line of township 7 south;

AREA DEFINITIONS (Cont'd)

AREA 1: (Cont d)

Thence westerly along the southerly line of township 7 south to the S W corner of township 7 south, range 20 east;
Thence southerly to the S E corner of township 8 south range 19 east;
Thence westerly along the southerly line of township 8 south to the S E corner of township 8 south range 12 east;
Thence southerly along the easterly line of range 12 east to the S E corner of township 20 south range 12 east;
Thence westerly along the southerly line of township 20 south to the S E corner of township 20 south range 3 east;
Thence southerly along the easterly line of range 3 east to the S E corner of township 27 south range 3 east;
Thence westerly to the intersection of the southerly line of township 27 south and the Salt Lake Meridian, thence southerly along the Salt Lake Meridian to the intersection of the Salt Lake Meridian and the southerly line of township 39 south;
Thence westerly crossing the Salt Lake Meridian to the S E corner of township 39 south range 2 west;
Thence southerly to the S E corner of township 41 south, range 2 west;
Thence westerly to the S E corner of township 41 south, range 3 west;
Thence southerly along the easterly line of range 3 west to the Utah/Arizona border;
Thence westerly along the Utah/Arizona border to the Utah/Arizona/Nevada border;
Thence northerly along the Utah/Nevada border to the point of beginning; commencing at the intersection of the Utah/Colorado border and the southerly line of township 34 south;
Thence westerly to the S W corner of township 34 south, range 21 east;
Thence northerly to the S W corner of township 29 south range 21 east;
Thence westerly to the S W corner of township 29 south, range 19 east;
Thence northerly to the N W corner of township 23 south range 19 east;
Thence easterly to the N W corner of township 23 south, range 22 east;
Thence northerly to the N W corner of township 21 south, range 22 east;
Thence easterly to the N E corner of township 21 south, range 24 east;
Thence southerly to the N E corner of township 31 south, range 24 east;
Thence easterly along the northerly line of township 31 south to the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the point of beginning

AREA 2: All areas not included in Area 1 as defined

[FR Doc 77-2474 Filed 1-21-77;8:45 am]