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Daily List of Public Laws

This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statute citation. Subsequent lists appear each day in the FEDERAL REGISTER, and copies of the laws may be obtained from the U.S. Government Printing Office.

H.J. Res. 375..... Pub Law 94–17
Veterans Administration; Federal Election Commission, additional appropriations, 1975
(April 24, 1975; 89 Stat. 79)

S. 994..... Pub. Law 94–18
Nuclear Regulatory Commission, supplemental appropriation authorization, 1975
(April 25, 1975; 89 Stat. 80)

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 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one position of Private Secretary to the Confidential Assistant to the Secretary is reestablished under Schedule C.

Effective on April 30, 1975, § 213.3313 (a) (28) is added as set out below:

§ 213.3313 Department of Agriculture.

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

(28) One Private Secretary to the Confidential Assistant to the Secretary.

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

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

[FR Doc.75–11288 Filed 4–29–75;8:45 am]

PART 213—EXCEPTED SERVICE

Commodity Futures Trading Commission

Section 213 is amended to show that the Commodity Futures Trading Commission is a newly established independent agency and that the following positions are excepted under Schedule C: one position of Secretary to the Chairman, one position of Administrative Assistant to the Chairman, one position of Administrative Assistant to each of four Commissioners, and one position of Public Information Officer.

Effective on April 30, 1975, § 213.3379 is added as set out below.

§ 213.3379 Commodity Futures Trading Commission.

(a) One Secretary and one Administrative Assistant to the Chairman.

(b) One Administrative Assistant to each of four Commissioners.

(c) One Public Information Officer.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

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

[FR Doc.75–11289 Filed 4–29–75;8:45 am]

PART 213—EXCEPTED SERVICE

Community Services Administration

Part 213 is amended to show (1) a headnote change from Office of Economic Opportunity to Community Services Administration, (2) its establishment as an independent agency, and (3) its transfer out of the Executive Office of the President. Part 213 is also amended to show that the following positions are no longer excepted under Schedule B: Not to exceed 35 positions at GS–9 through GS–15 in new, experimental programs or special projects when it is determined that existing registers are not appropriate or do not permit appointment expeditiously. In addition, Part 213 is amended to show that one position of Associate Director for Congressional Relations and one position of Associate Director for Public Affairs are excepted under Schedule C. Part 213 is further amended to show that the following positions are no longer excepted under Schedule C: two positions of Special Assistant to the Director, one position of Deputy Associate Director for Congressional Relations, one position of Confidential Secretary to the Special Assistant to the Director, one position of Confidential Secretary to the Associate Director for Public Affairs, one position of Congressional Relations Specialist, and one position of Deputy Associate Director for Human Rights.

Effective on April 30, 1975:

§ 213.3203 [Revoked]

1. Section 213.3203 is revoked.

§ 213.3303 [Amended]

2. Section 213.3303(k) is revoked.

3. Sections 213.3273 and 213.3373 are added as set out below:

§ 213.3273 Community Services Administration.

(a) Seven Regional Directors.

(b) [Reserved]

(c) One Chief, Research and Plans Division.

§ 213.3373 Community Services Administration.

(a) *Office of the Director.* (1) One Assistant Director for Plans, Research, and Evaluation.

(2) One Executive Assistant to the Director.

(3) One Confidential Assistant to the Director.

(4) One Confidential Secretary and one Private Secretary to the Director.

(5) One Confidential Assistant to the Special Assistant to the Director.

(b) *Office of Operations.* (1) One Special Assistant to the Assistant Director.

(2) One Confidential Staff Assistant to the Assistant Director.

(3) One Chief, State and Local Government Division.

(c) *Office of Program Review.* (1) One Special Assistant to the Associate Director.

(2) One Planning and Review Advisor to the Associate Director.

(3) One Chief, Private Resources Division.

(4) One Coordinator, Rural Affairs Program.

(5) One Coordinator, Youth Affairs Program.

(d) *Office of Congressional Relations.* (1) The Associate Director.

(2) One Confidential Advisor to the Associate Director.

(e) *Office of Public Affairs.* (1) The Associate Director.

(2) Two Confidential Assistants to the Associate Director.

(f) *Office of General Counsel.* (1) One Confidential Secretary to the General Counsel.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–58 Comp., p. 218)

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

[FR Doc.75–11290 Filed 4–29–75;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one additional position of Confidential Assistant to the Attorney General is excepted under Schedule C.

Effective on April 30, 1975, § 213.3310 (a) (4) is amended as set out below.

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* * * *

(4) Two Confidential Assistants to the Attorney General.

(5 U.S.C. secs. 3301, 3302, E.O. 10577, 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–11291 Filed 4–29–75;8:45 am]

PART 213—EXCEPTED SERVICE

National Credit Union Administration

Section 213.3357 is amended to show that one position of Legislative Liaison Officer is excepted under Schedule C.

Effective on April 30, 1975, § 213.3357 (c) is added as set out below:

§ 213.3357 National Credit Union Administration.

* * * * *

(c) One legislative Liaison Officer.

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

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

[FR Doc.75-11292 Filed 4-29-75;8:45 am]

PART 213—EXCEPTED SERVICE

Miscellaneous Revocation

Subpart C of Part 213 is amended to show that under the provisions of § 213.3101b, 1 position is no longer excepted under Schedule C.

Section 213.3304 *Department of State,* is amended by revoking paragraph (a) (18) as set forth below.

§ 213.3304 Department of State.

(a) *Office of the Secretary.* * * *
(18) [Revoked]

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1953 Comp., p. 218)

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

[FR Doc.75-11293 Filed 4-29-75;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revisions of Delegations of Authority

Part 2, Subtitle A, Title 7, the Code of Federal Regulations is amended to revise the delegations of authority to the Assistant Secretary for International Affairs and Commodity Programs to reflect broader responsibilities under the rural environmental programs; assistance to Agricultural Marketing Service for certain activities; the transfer of of functions of the Export Marketing Service to the Foreign Agricultural Service and other minor editorial changes. Because the changes concern rules of the agency organization, procedure, and practice, the prior notice, public rulemaking procedure, and effective date requirements are omitted as unnecessary.

Subpart C—Delegations of Authority to the Under Secretary, Assistant Secretaries, and Directors

1. Section 2.21, paragraph (a) is amended by revising subparagraphs (3), (5), (10), (14), (21), (23), (28), (29), and (30) and by revoking and reserving subparagraph (11) to read as follows:

§ 2.21 Delegations of authority to the Assistant Secretary for International Affairs and Commodity Programs.

* * * * *

(a) * * *

(3) Administer the rural environmental programs (except Great Plains program) and diversion programs under Title X of the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501 et seq.) and under sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g et seq.).

* * * * *

(5) Administer the beekeeper indemnity payment program under section 804 of the Agricultural Act of 1970, as amended (7 U.S.C. 135b note).

* * * * *

(10) Conduct refinancing operations pursuant to section 304 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2094) and administer assigned responsibilities and functions under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1959, as amended (50 U.S.C. App. 2251 et seq.)

(11) [Reserved]

* * * * *

(14) Administer the feed grain program under section 105 of the Agricultural Act of 1949, as amended (7 U.S.C. 1441 note).

* * * * *

(21) Administer the upland cotton program under section 103 of the Agricultural Act of 1949, as amended (7 U.S.C. 1444) and the extra long staple cotton program under section 101 of the Agricultural Act of 1949, as amended (7 U.S.C. 1441 (f)).

* * * * *

(23) Administer the wheat program under section 107 of the Agricultural Act of 1949, as amended (7 U.S.C. 1445a).

* * * * *

(28) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services on surplus removal and supply operations, under section 5 (b), (c), and (d) of the CCC Charter Act (15 U.S.C. 714c (b), (c), and (d)), section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 14331), section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a), except as specified in §§ 2.17(d) and 2.21(d), and assist the Agricultural Marketing Service in the procurement, handling, payment and related services under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), and the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(29) Administer commodity procurement and supply, transportation (other than from point of export except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under title II of Pub. L. 480 (7 U.S.C. 1721–1725), and payment and related services for the Foreign Agricultural Service with respect to export subsidy and barter operations, operations under title I of Public Law 480, and the export credit sales program.

(30) Administer wool and mohair programs under section 704 of the National Wool Act of 1954, as amended (7 U.S.C. 1783), and under the authority of section 708 of that Act (7 U.S.C. 1787), conduct producer referendums, withhold funds (for advertising and promotion) from payments made to producers under section 704, and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Consumer Affairs.

* * * * *

2. Section 2.22 is amended by revoking and reserving paragraph (a) (5) as follows:

§ 2.22 Reservations of authority.

* * * * *

(a) Related to agricultural stabilization and conservation.

* * * * *

(5) [Reserved]

* * * * *

Subpart H—Delegations of Authority by the Assistant Secretary for International Affairs and Commodity Programs

3. Section 2.65, paragraph (a) is amended by revising subparagraphs (3), (5), (10), (14), (21), (23), (28), (29), and (30) and by revoking and reserving subparagraph (11) to read as follows:

§ 2.65 Administrator, Agricultural Stabilization and Conservation Service.

(a) Delegations. * * *

(3) Administer the rural environmental programs (except the Great Plains program) and diversion programs under Title X of the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501 et. seq.) and under sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g et seq.).

* * * * *

(5) Administer the beekeeper indemnity payment program under section 804 of the Agricultural Act of 1970, as amended (7 U.S.C. 135b note).

* * * * *

(10) Conduct refinancing operations pursuant to section 304 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2094) and administer assigned responsibilities and functions under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1959, as amended (50 U.S.C. App. 2251 et seq.)

(11) [Reserved]

* * * * *

(14) Administer the feed grain program under section 105 of the Agricultural Act of 1949, as amended (7 U.S.C. 1441 note).

* * * * *

(21) Administer the upland cotton program under section 103 of the Agricultural Act of 1949, as amended (7 U.S.C.

1444) and the extra long staple cotton program under section 101 of the Agricultural Act of 1949, as amended (7 U.S.C. 1441(f)).

* * * * *

(23) Administer the wheat program under section 107 of the Agricultural Act of 1949, as amended (7 U.S.C. 1445a).

* * * * *

(28) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services on surplus removal and supply operations, under section 5(b), (c), and (d) of the CCC Charter Act (15 U.S.C. 714c (b), (c), and (d)), section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431), section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a), except as specified in §§ 2.17(d) and 2.21 (d), and assist the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), and the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(29) Administer commodity procurement and supply, transportation (other than from point of export except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under title II of Pub. L. 480 (7 U.S.C. 1721–1725), and payment and related services for the Foreign Agricultural Service with respect to export subsidy and barter operations, operations under title I of Pub. L. 480, and the export credit sales program.

(30) Administer wool and mohair programs under section 704 of the National Wool Act of 1954, as amended (7 U.S.C. 1783), and under the authority of section 708 of that Act (7 U.S.C. 1787), conduct producer referendums, withhold funds (for advertising and promotion) from payments made to producers under section 704, and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Consumer Services.

* * * * * *

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

Effective date: April 30, 1975.

For Subpart C:

Signed at Washington, D.C., on April 23, 1975.

EARL L. BUTZ,
Secretary of Agriculture.

For Subpart H:

Signed at Washington, D.C., on April 23, 1975.

CLAYTON YEUTTER,
Assistant Secretary for International Affairs and Commodity Programs.

[FR Doc.75-11238 Filed 4-29-75;8:45 am]

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES)

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Frozen Broccoli

Correction

In FR Doc. 75-8824 appearing at page 15890 in the issue for Tuesday, April 8, 1975 make the following correction:

Under § 52.637(a) (9), in the seventh line of Table IV, under the heading "Defect" change the figure in parenthesis from "(1.0 cm)" to read "(1.9 cm)".

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK) DEPARTMENT OF AGRICULTURE

[Milk Order No. 4; Docket No. AO-160-A50]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Order Amending Order

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1004.85.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order, including provisions constituting the Advertising and Promotion Program, is approved or favored by at least two-thirds of the producers who participated in referenda and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1004.1 General provisions.

DEFINITIONS

1004.2 Middle Atlantic marketing area.
1004.3 Route disposition.
1004.4 Plant.
1004.5 [Reserved]
1004.6 [Reserved]
1004.7 Pool plant.
1004.8 Nonpool plant.
1004.9. Handler.
1004.10 Producer-handler.
1004.11 Dairy farmer.
1004.12 Producer.
1004.13 Producer milk.
1004.14 Other source milk.
1004.15 Fluid milk product.
1004.16 [Reserved]
1004.17 Filled milk.
1004.18 Exempt milk.

Sec.
1004.19 [Reserved]
1004.20 Cooperative association.

HANDLER REPORTS

1004.30 Reports of receipts and utilization.
1004.31 [Reserved]
1004.32 Other reports.

CLASSIFICATION OF MILK

1004.40 Classes of utilization.
1004.41 Shrinkage.
1004.42 Classification of transfers and diversions.
1004.43 General rules.
1004.44 Classification of producer milk.
1004.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1004.50 Class prices.
1004.51 Basic formula price.
1004.52 Location differentials to handlers.
1004.53 Announcement of class prices and producer butterfat differential.
1004.54 Equivalent prices or indexes.

UNIFORM PRICES

1004.60 Pool obligation of each pool handler.
1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.
1004.62 Announcement of weighted average price and uniform prices for base milk and excess milk.

PAYMENTS FOR MILK

1004.70 Producer-settlement fund.
1004.71 Payments to the producer-settlement fund.
1004.72 Payments from the producer-settlement fund.
1004.73 Payments to producers and to cooperative associations.
1004.74 Butterfat differential.
1004.75 Location differentials to producers and on nonpool milk.
1004.76 Payments by a handler operating a partially regulated distributing plant.
1004.77 Adjustment of accounts.
1004.78 [Reserved]
1004.79 Direct delivery differential.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1004.85 Assessment for order administration.
1004.86 Deduction for marketing services.

BASE-EXCESS PLAN

Sec.
1004.90 Base milk.
1004.91 Excess milk.
1004.92 Computation of base for each producer.
1004.93 Base rules.
1004.94 Relinquishing a base.
1004.95 Announcement of base.

ADVERTISING AND PROMOTION PROGRAM

1004.110 Agency.
1004.111 Composition of the Agency.
1004.112 Term of office.
1004.113 Selection of Agency members.
1004.114 Agency operating procedure.
1004.115 Powers of the Agency.
1004.116 Duties of the Agency.
1004.117 Advertising, research, education, and promotion program.
1004.118 Limitation of expenditures by the Agency.
1004.119 Personal liability.
1004.120 Procedure for requesting refunds.
1004.121 Duties of the market administrator.
1004.122 Liquidation.

AUTHORITY: The provisions of this subpart issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1004.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1004.2 Middle Atlantic marketing area.

"Middle Atlantic marketing area" (hereinafter called the "marketing area") means all territory within the boundaries of the following places, including piers, docks and wharves and territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) The District of Columbia.

(b) The State of Delaware.

(c) In the State of Maryland:

(1) The counties of:

Anne Arundel.	Kent.
Baltimore.	Montgomery.
Calvert.	Prince Georges.
Caroline.	Queen Annes.
Carroll.	Somerset.
Cecil.	St. Marys.
Charles.	Talbot.
Dorchester.	Washington.
Frederick.	Wicomico.
Harford.	Worcester.
Howard.	

(2) The city of Baltimore.

(d) In the State of New Jersey:

(1) The counties of:

Atlantic.	Cumberland.
Burlington.	Gloucester.
Camden.	Mercer.
Cape May.	Salem.

(2) In Ocean County:

(i) The townships of:

Eagleswood.	Ocean.
Lacey.	Stafford.
Long Beach.	Union.
Little Egg Harbor.	

(ii) The boroughs of:

Barnegat Light.	Ship Bottom.
Beach Haven.	Tuckerton.
Harvey Cedars.	

(e) In the State of Pennsylvania, the counties of:

Adams.	Juniata.
Bucks.	Lancaster.
Chester.	Lebanon.
Cumberland.	Montgomery.
Dauphin.	Perry.
Delaware.	Philadelphia.
Franklin.	York.
Fulton.	

(f) In the State of Virginia:

(1) The counties of:

Arlington.	Loudoun.
Fairfax.	Prince William.

(2) The cities of:

Alexandria.	Fairfax.
Falls Church.	

§ 1004.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery through a distribution depot, by a vendor, from a plant store or through a vending machine) except any delivery to a plant.

§ 1004.4 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

§ 1004.5 [Reserved]

§ 1004.6 [Reserved]

§ 1004.7 Pool plant.

Except as provided in paragraph (f) of this section, "pool plant" means a plant (except a producer-handler plant or the plant of a handler pursuant to § 1004.9 (e)) specified in paragraphs (a) through (e) of this section.

(a) A plant from which during the month a volume not less than 50 percent of its receipts described in subparagraph (1) or (2) of this paragraph is disposed of as Class I milk (except filled milk) and a volume not less than 10 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area;

(1) Milk received at such plant directly from dairy farmers (including milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, but excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

(2) In the case of a plant with no receipts described in subparagraph (1) of this paragraph, receipts of fluid milk products (other than filled milk) from other plants.

(b) Any plant not meeting the conditions of paragraph (a) of this section from which during the month a quantity of fluid milk products (other than filled milk) not less than the applicable percentage (as specified in subparagraph (1) of this paragraph) of such plant's receipts of milk from dairy farmers (including milk diverted as produce milk pursuant to § 1004.12 by either the plant operator or by a cooperative association) and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) is moved to a plant(s) meeting the percentage disposition requirements specified in paragraph (a) of this section with respect to its total receipts of fluid milk products (other than filled milk) from dairy farmers, cooperative associations as handlers pursuant to § 1004.9(c) and from other plants. However, a plant shall not qualify pursuant to this paragraph in any month in which a greater proportion of its qualifying

shipments are made to a plant(s) regulated under another Federal order than to plants regulated under this order.

(1) The applicable percentage for the purpose of this paragraph shall be:

(i) 50 percent for any month of September through February; and

(ii) 40 percent for any month of March through August.

(c) A reserve processing plant which was a pool plant under this paragraph in the month immediately preceding the effective date of this order, which does not meet the conditions for pool status pursuant to paragraph (a) or (b) of this section shall continue to hold such status in each consecutive succeeding month in which:

(1) It is owned and operated by a handler who also operates a plant qualified pursuant to paragraph (a) of this section;

(2) The plant does not qualify as a pool plant pursuant to the provisions of another Federal order;

(3) The plant, in combination with a distributing plant of such handler, meets the performance standards of paragraph (a) of this section;

(4) No plant of such handler is a means for qualification of any other plant for pooling pursuant to paragraph (b) of this section; and

(5) The handler notifies the market administrator each month, at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator, with respect to any receipts from dairy farmers delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

(d) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 50 percent of the total milk of member producers during the month: *Provided,* That in the case of a cooperative association that owns and operates both a reserve processing plant and a pool plant pursuant to § 1004.7(a), the provisions of this paragraph shall have been met so long as the volume of the cooperative's member milk pooled at the reserve processing plant does not exceed the volume of sales of Class I milk (except filled milk) from the cooperative's pool distributing plant, plus the milk of member producers received directly at pool plants pursuant to § 1004.7(a) of other handlers during the month, and provided further that a cooperative operating a pool reserve processing plant qualified pursuant to this paragraph shall notify the market administrator each month, at the time of filing reports pursuant to § 1004.30 in the detail prescribed by the market administrator, with respect to any receipts from member dairy farmers delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

(e) Subject to the conditions of subparagraph (1) of this paragraph, a plant that was qualified pursuant to paragraph (b) of this section during each of the immediately preceding months of September through February shall remain so qualified during the following months of March through August, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month of such period during which it does not otherwise qualify pursuant to said paragraph (b):

(1) The automatic pooling status of any plant pursuant to this paragraph shall be canceled beginning on the first day of any month during the March through August period in which another supply plant is qualified for pooling through shipments to the same plants through which such automatic pooling status was acquired.

(f) A plant specified in subparagraph (1) or (2) of this paragraph shall, except as provided in §§ 1004.32(e) and 1004.71(c), be exempt from the provisions of this part:

(1) Any plant qualified pursuant to paragraph (a) of this section which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant as route disposition in the Middle Atlantic marketing area than is so disposed of in a marketing area regulated pursuant to such other order; or

(2) Any plant subject to the classification and pricing provisions of another order issued pursuant to the Act, notwithstanding its status under this order pursuant to paragraphs (a) or (b) of this section.

§ 1004.8 Nonpool plant.

"Nonpool plant" means a plant other than a pool plant. The following categories of nonpool plants are further defined:

(a) "Other order plant" means a plant that is fully subject to the pricing and payment provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.9(e), from which fluid milk products in consumer-type packages or dispenser units are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a plant which is not a pool plant, a producer-handler plant, an other order plant, or the plant of a handler pursuant to § 1004.9(e), from which fluid milk products are shipped during the month to a plant qualified under § 1004.7.

§ 1004.9 Handler.

"Handler" means any person described in paragraphs (a) through (f) of this section. Any person in his capacity as the operator of a pool plant or a cooperative association in its capacity as a handler pursuant to paragraph (b) or (c) of this section shall be a "pool handler".

(a) Any person in his capacity as the operator of:

(1) A pool plant;

(2) A partially regulated distributing plant;

(3) An unregulated supply plant; or

(4) An other order plant.

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of § 1004.12 for the account of such cooperative association.

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another person in a tank truck owned and operated by or under contract to such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of farm weights determined by farm bulk tank calibrations and butterfat tests based on samples taken at the farm. Milk for which the cooperative association is qualified pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which such milk is delivered.

(d) A producer-handler.

(e) A governmental agency in its capacity as the operator of a plant with route disposition in the marketing area.

(f) Any other person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.

§ 1004.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a plant with route disposition in the marketing area, and who meets the conditions of paragraphs (a), (b), and (c) of this section:

(a) The sole source of supply of fluid milk products is his own farm production and transfers of such products from pool plants;

(b) The quantity of fluid milk products received from pool plants during the month does not exceed 10,000 pounds; and

(c) Such person furnishes proof satisfactory to the market administrator that the maintenance and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants), and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.79, 1004.85 and 1004.86, 1004.90 through 1004.95, and 1004.110 through 1004.122 shall not apply to a producer-handler.

§ 1004.11 Dairy farmer.

"Dairy farmer" means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a "dairy farmer for other markets" with respect to milk reported pursuant to § 1004.7(c)(5) or the proviso of paragraph (d) of said § 1004.7.

§ 1004.12 Producer.

Subject to the conditions of paragraph (e) and the exceptions of paragraph (f) of this section, "producer" means any person described in paragraphs (a) through (d) of this section.

(a) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7 (a), (b), (c) or (e) directly from the farm including milk received at a pool plant pursuant to § 1004.7(c) as milk diverted from a pool plant pursuant to § 1004.7 (a), (b), or (e).

(b) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(d): *Provided,* That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received as milk diverted from a pool plant pursuant to § 1004.7 (a), (b) or (e).

(c) A dairy farmer with respect to milk received by a cooperative association in its capacity as a handler pursuant to § 1004.9(c).

(d) A dairy farmer with respect to milk which is diverted to a nonpool plant (other than a producer-handler plant) in accordance with the conditions of subparagraphs (1) and (2) of this paragraph.

(1) During any month of March through August.

(2) Not more than 10 days production during any month of September through February unless all of the diversions of member and nonmember milk, as the case may be, are pursuant to subdivision (i) or (ii), respectively, of this subparagraph and they fall within the limits prescribed thereunder. If a handler diverting milk pursuant to this subparagraph diverts milk of any dairy farmer in excess of the limits prescribed such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant.

(i) All of the diversions of milk of members of a cooperative association to nonpool plants are for the account of such cooperative association and the amount of member milk so diverted does not exceed 25 percent of the volume of milk of all members of such cooperative association received at all pool plants during such month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 25 percent of the total of such nonmember milk delivered to such handler during the month.

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted in the manner described in subparagraph (1), (2), or (3) of this paragraph shall be treated as though received at the location of the plant to which diverted.

(1) Diverted from a pool plant at which no location adjustment credit is applicable to a plant at which a location adjustment credit is applicable.

(2) Diverted from a pool plant at which a location adjustment credit is applicable to a plant at which a greater location adjustment credit is applicable.

(3) Diverted from a pool plant in the direct-delivery zone to a plant outside such direct-delivery zone.

(f) This definition shall not include a:

(1) Producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Dairy farmer for other markets;

(3) Government agency which is a handler pursuant to § 1004.9(e);

(4) Dairy farmer with respect to milk reported as milk diverted to an other order plant if any portion of such dairy farmer's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from an other order plant if all of the milk so received from such dairy farmer is assigned to Class II and the milk is treated as producer milk under the provisions of such other order.

§ 1004.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk:

(a) Received at a pool plant pursuant to § 1004.7 (a), (b), (c) or (e) directly from the farm including milk received at a pool plant pursuant to § 1004.7(c) as milk diverted from a pool plant pursuant to § 1004.7 (a), (b), or (e).

(b) Received at a pool plant pursuant to § 1004.7(d): *Provided,* That such milk is received directly from the farm of one who is a member of the cooperative operating the plant or is received as milk diverted from a pool plant pursuant to § 1004.7 (a), (b), or (e).

(c) Received from producers by a cooperative association in its capacity as a handler pursuant to § 1004.9(c); or

(d) Diverted to a nonpool plant in accordance with the provisions of § 1004.12.

§ 1004.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products from any source other than producers, pool plants, or from a cooperative association in its capacity as a handler pursuant to § 1004.9(c);

(b) Receipts (including any Class II product produced in the handler's plant during a prior month) in a form other than as a fluid milk product which are reprocessed, converted, or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

§ 1004.15 Fluid milk product.

"Fluid milk product" means milk, skim milk (including concentrated and reconstituted milk or skim milk), buttermilk, cultured buttermilk, flavored milk, milk drinks (plain or flavored), filled milk, and (except ice cream, ice cream mixes, ice milk mixes, milkshake mixes, eggnog, yogurt, condensed or evaporated milk, and any product which contains 6 percent or more nonmilk fat [or oil]) any mixture in fluid form of cream and milk or skim milk containing less than 10 percent butterfat: *Provided,* That when the product is modified by the addition of nonfat milk solids, the amount of skim milk to be included within this definition shall be only that amount equal to the weight of skim milk in an equal volume of unmodified product of the same nature and butterfat content.

§ 1004.16 [Reserved]

§ 1004.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1004.18 Exempt milk.

"Exempt milk" means bulk fluid milk products received at a pool plant or a partially regulated distributing plant from the plant of a handler pursuant to § 1004.9(e) for processing and packaging and for which an equivalent quantity of packaged fluid milk products is returned to such handler during the month.

§ 1004.19 [Reserved]

§ 1004.20 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is engaged in

making collective sales of or marketing milk or milk products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1004.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each handler with respect to each of his pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production);

(ii) Receipts of fluid milk products from other pool plants and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c); and

(iii) Receipts of other source milk;

(2) Inventories of fluid milk products on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of producer milk; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each producer-handler and each handler pursuant to § 1004.9(e) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(d) On or before the eighth day after the end of each month, each cooperative association shall report with respect to milk for which it is a handler pursuant to § 1004.9 (b) or (c) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants; and

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler.

§ 1004.31 [Reserved]

§ 1004.32 Other reports.

(a) Each pool handler shall report to the market administrator in detail and on forms prescribed by the market administrator as follows:

(1) On or before the 25th day after the end of the month for each pool plant, his producer payroll for such month which shall show for each producer:

(i) His name and address;

(ii) The total pounds of milk received from such producer;

(iii) The average butterfat content of such milk; and

(iv) The net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, the health department permit number, if applicable, the date on which the changes took place, and the farm and plant location involved.

(c) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1004.76(b) shall report the same information as required in paragraph (a) of this section with respect to dairy farmers from whom he receives milk.

(d) On or before the 20th day after the end of the month, each handler pursuant to § 1004.9(f) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, all transactions wherein milk was bought or dealt in, giving the following information:

(1) The name and address of any cooperative association or producer for whom the handler by either purchase or direction caused milk of producers to be moved to a plant;

(2) The total pounds of milk involved in the transaction, and the average butterfat content of such milk; and

(3) Such other information with respect to such transaction as the market administrator may prescribe.

(e) Each handler operating a plant described in § 1004.7(f) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of other reports specified in this section or in § 1004.30) and allow verification of such reports by the market administrator.

CLASSIFICATION OF MILK

§ 1004.40 Classes of utilization.

Subject to the conditions set forth in §§ 1004.41 through 1004.44, all skim milk and butterfat required to be reported by a handler pursuant to §§ 1004.30 and 1004.32 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product except as provided in paragraph (b) (2), (3), or (7) of this section;

(2) Contained in inventory of packaged fluid milk products on hand at the end of the month; and

(3) Not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than a fluid milk product;

(2) Disposed of for livestock feed;

(3) Contained in fluid milk products which are dumped, if the handler gives the market administrator such advance notice of intent to dump as the market administrator may prescribe;

(4) Contained in inventory of fluid milk products in bulk which are on hand at the end of the month;

(5) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.41(b) (1), but not to exceed the following:

(i) Two percent of producer milk received at a pool plant; plus

(ii) One and one-half percent of milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1004.9(c); plus

(iii) One and one-half percent of milk received at a pool plant in bulk tank lots from other pool plants; plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the handler (and by the operator of such other order plant if such receipt is fully subject to the classification and pricing provisions of such other order); plus

(v) One and one-half percent of receipts from dairy farmers for other markets pursuant to § 1004.11 and receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of milk moved in bulk tank lots from a pool plant to other plants; and plus

(vii) One-half of 1 percent in receipts of producer milk by a cooperative association in its capacity as a handler pursuant to § 1004.9(c);

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1004.41(b) (2);

(7) Disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which fluid milk products were used only in the manufacture of food products other than milk products; and

(8) In skim milk represented by the nonfat milk solids added to a fluid milk product for fortification which is in excess of the volume included within the fluid milk product definition pursuant to § 1004.15.

§ 1004.41 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Shrinkage shall be prorated between: (1) Skim milk and butterfat in receipts described in § 1004.40(b)(5); and (2) skim milk and butterfat in other source milk, exclusive of that specified in § 1004.40(b) (5).

§ 1004.42 Classification of transfers and diversions.

Skim milk and butterfat in the form of any fluid milk product shall be classified:

(a) As Class I milk if diverted from a pool plant pursuant to § 1004.7 (a), (b), or (e) to a pool plant pursuant to § 1004.7 (c) or (d), or transferred from a pool plant or by a cooperative association as a handler pursuant to § 1004.9(c) to a pool plant, unless Class II utilization is indicated by the transferee and transferor handlers (or by the handler if such transaction is between two pool plants of the same handler) in their reports pursuant to § 1004.30(a) for the month, subject to the conditions of subparagraphs (1), (2), and (3) of this paragraph:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(5), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1004.44(a)(9) or (10), and the corresponding steps of § 1004.44(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted from a pool plant or delivered by a cooperative association in the capacity as a handler pursuant to § 1004.9(c) to a handler pursuant to § 1004.9(e);

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is not an other order plant, a producer-handler plant, or the plant of a handler pursuant to § 1004.9(e), unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph;

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1004.30 for the month within which such transaction occurred;

(2) The operator of such nonpool transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, and thereafter pro rata to receipts from other order plants;

(ii) Any route disposition in the marketing area of an other order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, and thereafter pro rata to receipts from pool plants and other order plants not regulated by such order;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to the receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant, and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) Any remaining receipts from pool plants or other order plants shall be assigned to Class II: *Provided,* That if on inspection of the books and records of the nonpool plant the market administrator finds that the remaining unassigned receipts at such plant exceed the available Class II utilization, the transfer shall be classified as Class I up to the amount of such excess.

(e) As follows, if transferred to another order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1004.40.

§ 1004.43 General rules.

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30(a) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.9 (b) and (c) and was not received at a pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

§ 1004.44 Classification of producer milk.

After making the computations pursuant to § 1004.43, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to § 1004.9 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1004.40(b)(5);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in receipts of exempt milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants, except that to be subtracted pursuant to subparagraph (5)(vi) of this paragraph as follows:

(i) From Class II milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk the remainder of such receipts;

(4) Except for the first month this order is effective, with respect to plants

which in the immediately preceding month were unregulated plants, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of packaged fluid milk products on hand at the beginning of the month;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.11 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts (other than exempt milk) of fluid milk products from a handler pursuant to § 1004.9(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(vi) Receipts of reconstituted skim milk in filled milk from other order plants which are regulated under an order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in any case to exceed the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, receipts from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and in receipts in bulk from other order plants; and

(*c*) (*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in remaining receipts of fluid milk products in bulk from an other order plant which are in excess of similar movements to such plant, if such receipts were classified and priced pursuant to the other order and if Class II utilization was requested by the operator of such plant and the transferee handler, but not in excess of the pounds of skim milk remaining in Class II milk;

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products in bulk (and for the first month this order is effective, in packaged fluid milk products not subtracted pursuant to subparagraph (4) of this paragraph) on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class II, the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(9) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and from other order plant(s) if not classified or priced pursuant to the order regulating such plant, that were not subtracted pursuant to subparagraph (6) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk in remaining receipts of fluid milk products in bulk from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plant), in excess in each case of similar movements to the same plant, pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(*a*) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1004.45(b); or

(*b*) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case, the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) according to the classification assigned pursuant to § 1004.42(a); and

(12) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

§ 1004.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) On or before the 15th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in

the same ratio as all producer milk received by such handler during such month;

(b) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(c) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1004.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(d) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

Class Prices

§ 1004.50 Class prices.

Subject to the provisions of § 1004.52 the minimum class prices per hundredweight of milk containing 3.5 percent butterfat for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.78.

(b) *Class II price.* Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

Month:	*Amount*
January	+$0.05
February	+.04
March	—.03
April	—.07
May	—.10
June	—.09
July	+.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

§ 1004.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) at a pool plant located 55 miles or more by shortest highway distance from the city hall in Philadelphia, Pa., and also 75 miles or more by the shortest highway distance from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all such distance to be determined by the market administrator), and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced at the rate of 1.5 cents per 10-mile distance or fraction thereof that such plant location is from the nearest of such basing points.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers, cooperative associations pursuant to § 1004.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and from dairy farmers for other markets pursuant to § 1004.11. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply: *Provided,* That for the purposes of this paragraph, transfers from a pool plant to a second pool plant which are in turn transferred to a third pool plant shall be treated as though the transfer was direct from the originating plant to the plant of final receipt.

§ 1004.53 Announcement of class prices and producer butterfat differential.

On or before the fifth day of each month the market administrator shall publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(a) The Class I price for the following month, and for the first month for which this paragraph is effective, the Class I price for the current month;

(b) The Class II price for the preceding month; and

(c) The producer butterfat differential for the preceding month.

§ 1004.54 Equivalent prices or indexes.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner described in this part, the market administrator shall use a price or index determined by the Secretary to be equivalent or comparable with the factor which is specified.

Uniform Prices

§ 1004.60 Pool obligation of each pool handler.

The net pool obligation of each pool handler for each pool plant, and of each cooperative association handler pursuant to § 1004.9 (b) and (c) with respect to milk which was not received at a pool plant, shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated pursuant to § 1004.44(a)(11) and the corresponding step of § 1004.44 (b) and the quantity of producer milk in each class, as computed pursuant to § 1004.44(c), by the applicable class prices (adjusted pursuant to § 1004.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.44(a)(12) and the corresponding step of § 1004.44(b) by the applicable class prices adjusted by the applicable differentials pursuant to §§ 1004.52, 1004.74, and 1004.79;

(c) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(7) and the corresponding step of § 1004.44(b) for the current month;

(2) Multiply the difference between the applicable Class I price for the preceding month and the applicable Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(4) and the corresponding step of § 1004.44(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount.

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1004.44(a)(5) and the corresponding step of § 1004.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1004.44 (a)(5)(v) and (vi) and the corresponding step of § 1004.44(b) the Class I price shall be adjusted to the location of the transferor plant but not less than the Class II price; and

(e) Add an amount equal to the value at the Class I price of skim milk and butterfat assigned to Class I pursuant

to § 1004.44(a)(9) and the corresponding step of § 1004.44(b) (excluding receipts from partially-regulated distributing plants for which disposition a specific allocation is made to Federal order receipts from this or any other order) adjusted for the location of the nearest plant from which such types of receipts were received.

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) For each month the market administrator shall compute the weighted average price per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(2) Add an amount equal to the total value of the location differentials computed pursuant to § 1004.75;

(3) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to subparagraph (1) of this paragraph by 5 cents;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included pursuant to subparagraph (1) of this paragraph; and

(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(e);

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

(b) For each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk received from producers, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price less 5 cents;

(ii) Multiply the remaining hundredweight quantity of excess milk by the Class I price less 5 cents; and

(iii) Add together the resulting amounts.

(2) Divide the total value of excess milk obtained in subparagraph (1) of this paragraph by the total hundredweight of such milk and round to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations of subparagraphs (1) through (4) of paragraph (a) of this section subtract an amount computed by multiplying the hundredweight of milk specified in § 1004.61(a)(5)(ii) by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in subparagraph (2) of this paragraph by the hundredweight of excess milk, from the amount computed pursuant to subparagraph (3) of this paragraph;

(5) Divide the amount calculated pursuant to subparagraph (4) of this paragraph by the total hundredweight of base milk for handlers included in these computations: *Provided,* That if the resulting price should exceed the Class I price by more than the amount deducted pursuant to subparagraph (6) of this paragraph the aggregate amount in excess thereof shall be included in the computation of the excess price pursuant to subparagraph (1) of this paragraph, except that if by such addition the excess price should exceed the base price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to subparagraph (5) of this paragraph. The resulting figure shall be the uniform price for base milk.

§ 1004.62 Announcement of weighted average price and uniform prices for base milk and excess milk.

On or before the 13th day of each month, the market administrator shall publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the weighted average price and uniform prices for base milk and excess milk computed pursuant to § 1004.61 for the preceding month.

PAYMENTS FOR MILK

§ 1004.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§1004.71, 1004.76 and 1004.77 and out of which he shall make all payments from such fund pursuant to §§ 1004.72 and 1004.77: *Provided,* That the market administrator shall offset the payment due to a handler against payment due from such handler.

§ 1004.71 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The net pool obligation computed pursuant to § 1004.60 for such handler;

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to § 1004.9(c) at the applicable uniform price(s) pursuant to § 1004.61 adjusted by location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.9(c), the amount due from other handlers pursuant to § 1004.73(d), exclusive of differential butterfat values; and

(2) The value at the weighted average price plus 5 cents, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b) (not to be less than the value of the Class II price) with respect to other source milk for which values are computed pursuant to § 1004.60(e).

(c) Each handler operating a plant specified in § 1004.7(f)(1) if such plant is subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of on routes in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant on routes in the marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class II price.

§ 1004.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1004.73 Payments to producers and to cooperative associations.

(a) Except as provided in (b) and (d) of this section, each pool handler shall make payment as specified in subparagraphs (1) and (2) of this paragraph to each producer from whom milk is received.

(1) On or before the last day of each month at not less than the Class II price for the preceding month per hundredweight for his deliveries of producer milk during the first 15 days of the month; and

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.61(b) (3) through (6) with respect to base milk received from such producer and not less than the excess price determined pursuant to

§ 1004.61(b) (1) and (2) for excess milk received from such producers subject to the following adjustments: *Provided,* That such payment shall be at not less than the weighted average price with respect to milk received from producers, also subject to the following adjustments:

(i) Proper deductions authorized in writing by such producers;

(ii) Partial payments made pursuant to subparagraph (1) of this paragraph;

(iii) The butterfat differential computed pursuant to § 1004.74; and

(iv) Less the location differential received pursuant to § 1004.75: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler; and

(d) Each handler who receives milk from a cooperative association handler pursuant to § 1004.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a) (1) of this section; and

(2) A final payment equal to the value of such milk at the uniform price(s) adjusted by the applicable differentials pursuant to §§ 1004.74 and 1004.75, less the amount of partial payment on such milk.

(e) In making payments to producers pursuant to paragraph (a) (2) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each pool handler shall furnish such producer or cooperative association with respect to each of its producer members from whom the handler received milk during the month, a written statement showing:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate at which payment to such producer is required under paragraph (a) (2) of this section;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The nature and amount of any deductions made in payment due such producer; and

(6) The net amount of the payment to the producer.

§ 1004.74 Butterfat differential.

In making the payments to producers and cooperative associations required pursuant to § 1004.73, each handler shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent, as a butterfat differential an amount per hundredweight which shall be computed by the market administrator as follows: Multiply by 0.115 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department for the month.

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) Subject to the exception pursuant to § 1004.12(d), for that milk received from producers and from cooperative association handlers pursuant to § 1004.9 (c) at a pool plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant(s) from which the milk was received with respect to other source milk for which a value is computed pursuant to § 1004.60(e).

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1004.30(b) and 1004.32(c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1004.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to § 1004.9 (b), or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1004.60(e) and a credit in the amount specified in § 1004.71 (b) (2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1004.30(b) and 1004.32(c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1004.7(b) with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for milk (approved by a duly constituted health authority for fluid disposition) received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants; cooperative associations in their capacity as handlers pursuant to § 1004.9(b), and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (but not less than the Class II price), subtract its value at the weighted average price applicable at such location plus 5 cents (not to be less than the Class II price) and add for the quantity of reconstituted skim milk specified in subparagraph (3) of this paragraph its value computed at the Class I price applicable at the location of the nonpool plant (but not less than the Class II price), less the value of such skim milk at the Class II price.

§ 1004.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1004.78 [Reserved]

§ 1004.79 Direct-delivery differential.

For producer milk received at a plant located within 55 miles of the city hall in Philadelphia, Pa., the handler in making payments to producers and cooperative association handlers pursuant to § 1004.9(c), in addition to any amounts required by other provisions of this part, shall pay 6 cents per hundredweight of milk so received.

Administrative Assessment and Marketing Service Deduction

§ 1004.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 20th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to his receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.44(a) (5) and (9) and the corresponding step of § 1004.44(b);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to § 1004.9(b), and other order plants assigned to such disposition.

§ 1004.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for milk (other than milk of his own production) pursuant to § 1004.73(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1004.73(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

Base-Excess Plan

§ 1004.90 Base milk.

"Base milk" means milk received from a producer by a pool handler which is not in excess of such producer's daily base computed pursuant to § 1004.92 multiplied by the number of days in such month on which such producer's milk was so received: *Provided*, That with respect to any producer on every-other-day delivery, the day of nondelivery prior to a day of delivery, although such prior day is in the preceding month, shall be considered as a day of delivery for purposes of this paragraph.

§ 1004.91 Excess milk.

"Excess milk" means milk received from a producer by a pool handler which is in excess of base milk received from such producer during the month.

§ 1004.92 Computation of base for each producer.

For each month of the year, the market administrator shall compute, subject to the rules set forth in § 1004.93, a base for each producer described in paragraphs (a) through (e) of this section by dividing the applicable quantity of milk receipts specified in such paragraph by 153 (by 154 in the case of a producer on every-other-day delivery schedule who delivered August 1) less the number of days, if any, during the applicable base-forming period of August through December for which it is shown that the day's production of milk of such producer was not received by a pool handler as described in the applicable paragraphs (a) through (e) of this section under which such producer's base is computed: *Provided*, That in no event shall the number of days used to compute a producer's base pursuant to this section be less than 120.

(a) For any producer, except as provided in paragraphs (b) through (f) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of August through December;

(b) Except as provided in paragraph (c) of this section, for any producer whose milk was received at a plant which first became a pool plant after the beginning of the preceding August–December period, which plant was a pool plant for at least 120 days during such period, the quantity of milk receipts to be used in the computation of such producer's base shall be the total pounds of milk received from such dairy farmer at such plant during the entire August–December period.

(c) For any producer who on August 1 was an Order 2 (New York-New Jersey) producer and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under both orders throughout the August–December period.

(d) For any producer whose milk was received during the preceding August through December period at a plant which became a pool plant pursuant to § 1004.7(a) during or after such August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such August–December period by pool handlers as producer milk and at such plant as a nonpool plant.

(e) For any producer whose milk, in the initial month of operation of this extended order, is received at a plant

which becomes a pool plant pursuant to § 1004.7(b) for such month on the basis of qualifying shipments to a plant(s) which was not a pool plant in the immediately preceding month but is a pool plant(s) pursuant to § 1004.7(a) in such initial month, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during the immediately preceding August–December period (1) as producer milk by pool handlers and (2) as direct receipts at such transferor (nonpool) plant.

(f) Any producer who made no qualifying milk deliveries during the base-forming period of August through December, or who relinquishes his established base pursuant to § 1004.94, shall have a base reflecting the percentage of his average daily deliveries of producer milk each month as set forth in the following table. A new base is earned on the basis of his milk deliveries during the subsequent August through December period.

Month:	Percentage of production as base
January and February	60
March through June	50
July	60
August through November	70
December	60

§ 1004.93 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to paragraphs (a) through (e) of § 1004.92 (except as provided in paragraph (f) of said section) shall be effective for the subsequent months of March through February, inclusive.

(b) A base computed pursuant to paragraphs (a) through (e) of § 1004.92 may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfers shall be accomplished only through written application to the market administrator on forms prescribed by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, except as provided in paragraph (e) of this section, the entire base only is transferrable and only upon receipt of such application signed by all joint holders.

(d) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1004.9 (b) or (c), he shall establish a separate base with respect to producer milk delivered from each such farm; *Provided,* That if such farms and herds are combined into one dairy farm, the separate bases may be combined into one base subject to approval of the market administrator.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where a dairy farm is jointly owned or operated: *Provided,* That in the case of a base established jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the market administrator before the end of the base-forming period, then upon termination of the partnership agreement each partner will be entitled to his stated share of the base to hold in his own right or to transfer in conformity with the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which he is a member). Such termination of partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the market administrator.

(f) Two or more producers with bases may combine such bases upon the formation of a bona fide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (e) of this section.

(g) Subject to approval by the market administrator, the name of the baseholder may be changed to that of another member of the baseholder's immediate family but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

§ 1004.94 Relinquishing a base.

A producer holding an established base can, upon notification to the market administrator, relinquish his established base and be paid pursuant to the provisions of § 1004.92(f) beginning with the first day of the month in which such notification is received by the market administrator and extending until March 1, next.

§ 1004.95 Announcement of base.

On or before February 25 of each year, the market administrator shall notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the daily base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1004.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1004.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1004.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1004.113(b) is authorized one Agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers that have elected not to combine pursuant to § 1004.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for each full 5 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1004.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1004.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating membership and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1004.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required 5 percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more Agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for Agency membership and shall conduct a referendum among the individual producers eligible to vote. Election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1004.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1004.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1004.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91–670;

(c) Recommend amendments to the Secretary; and

(d) With the approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1004.110 and 1004.117.

§ 1004.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committee as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1004.110 and 1004.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings, and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1004.117 Advertising, research, education, and promotion program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1004.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1004.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1004.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1004.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

(d) A producer, located in a State which has a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of 5 cents per hundredweight.

§ 1004.121 Duties of the market administrator.

Except as specified in § 1004.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1004.113(c);

(b) Set aside the amounts subtracted under § 1004.61(a)(3) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to subparagraph (3) of this paragraph; payments, if any, to producers or States pursuant to subparagraph (2) of this paragraph; and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1004.61(a)(3).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1004.120 or make payment to any State on behalf of any producer for which specific authorization has been received pursuant to § 1004.120 (d). Such refund or payment, as the case may be, shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1004.61(a) (3) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (2) of this paragraph.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1004.110 through 1004.122).

(d) Audit the Agency's records of receipts and disbursements.

§ 1004.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1004.70.

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

Effective with respect to marketings on and after June 1, 1975.

Signed at Washington, D.C., on April 25, 1975.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.75-11319 Filed 4-29-75;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 213—OIL IMPORT REGULATIONS

Allocations for the Period Beginning May 1, 1975

Under the Mandatory Oil Import Program established pursuant to Proclamation No. 3279, as amended, the next allocation period for imports not subject to license fees under section 3(a) (1) (i)–(ii) of the Proclamation will commence on May 1, 1975. Section 8 of the Proclamation provides that for this allocation period, the maximum levels of imports subject to allocation and license, to which license fees under section 3(a) (1) (i)–(ii) shall not be applicable, shall be reduced to eighty percent (80%) of the levels established during the calendar year 1973. In accordance with Proclamation No. 3279, as amended, on March 31, 1975, the Federal Energy Administration (FEA) issued proposed amendments to Part 213 of Chapter II, Title 10 of the Code of Federal Regulations, to provide for the commencement of the next allocation period, and to reduce accordingly the levels of fee-exempt allocations (40 FR 14948, April 3, 1975).

Eighteen written comments were submitted, and additional oral presentations were made at the public hearing. Several companies expressed the concern that in light of Canada's announced intention to reduce exports to the United States from the current 800,000 bbl./day to 650,000 bbl./day on July 1, and to phase out such exports entirely by 1983, allocations of available Canadian imports for the period beginning May 1 should give preference to Canadian-dependent refiners over historic importers with alternate sources of supply. FEA has been aware of the potential problem posed to Canadian-dependent refiners for some time, but has made a preliminary determination that the Mandatory Oil Import Program is not the appropriate vehicle for any solution. Rather, FEA is considering the adoption of a regulation under the Emergency Petroleum Allocation Act of 1973, providing for a program to allocate Canadian imports among domestic refiners. On April 18, 1975, FEA issued a notice of hearing and request for comments to provide it with information relative to such a program. It is expected that if such a program is implemented, the regulations issued today will be amended to conform to allocations of Canadian imports under the Emergency Petroleum Allocation Act.

In connection with the reduced availability of Canadian imports, as well as the lower domestic demand due to conservation and the current recession, some companies suggested amendment of § 213.28 and § 213.33, which provide that where a person fails to utilize all of the Canadian imports specified in his allocation prior to the end of the allocation period, the Director of Oil Imports shall reduce his allocation. However, these sections also provide that the Director need not make such reductions to the extent that a person "demonstrates to the satisfaction of the Director that such failures were without such person's fault and were beyond his control." Hence, where full utilization of an allocation is prevented by the Canadian government's curtailment of supply, or by a decline in demand traceable to economic conditions, allocation holders will not be penalized.

In response to other comments, FEA is revising § 213.34 (Allocations of No. 2 fuel oil—District I) in order to avoid inequitable treatment of importers who held allocations in the allocation period January 1, 1973 through December 31, 1973, but not in the period May 1, 1974 through April 30, 1975. As proposed, § 213.34 provided that allocations for the next allocation period would be based on an applicant's allocation for the period beginning May 1, 1974. As revised, § 213.34 provides that allocations for the next allocation period shall be based on the applicant's allocation for the period January 1, 1973 through December 31, 1973.

Finally, the deadline for applications for allocations has been changed from April 21 to April 29, in order to provide time for submitting an application after the appearance of these amendments.

[Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185; Trade Expansion Act of 1962, P.L. 87-794, as amended; Proclamation No. 3279, 24 FR 1781, as amended by Proclamation No. 4210, 38 FR 9645, Proclamation No. 4227, 38 FR 16195, Proclamation No. 4317, 38 FR 35103, Proclamation No. 4341, 40 FR 3956, and Proclamation No. 4355, 40 FR 10437]

In consideration of the foregoing, Part 213 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., April 24, 1975.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

1. Section 213.5 is amended by revising paragraph (a) to read as follows:

§ 213.5 Applications for allocations and licenses.

(a) Applications for all allocations not subject to license fee of imports of crude oil, unfinished oils, or finished products for the allocation period May 1, 1975 through April 30, 1976, except for applications made pursuant to § 213.10, must be filed with the Director in such form as he may prescribe, not later than April 29, 1975.

* * * * *

2. Section 213.9 is amended by revising paragraphs (a), (b), and (f) to read as follows:

§ 213.9 Allocations; petrochemical plants; Districts I–IV and District V.

(a) For the allocation period May 1, 1975 through April 30, 1976, each eligible person with a petrochemical plan in Districts I–IV shall receive an allocation not subject to license fee but subject to supplemental fee of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in these districts during the calendar year 1974 multiplied by 11.2 percent × .80.

(b) For the allocation period May 1, 1975 through April 30, 1976, each eligible person with a petrochemical plant in District V shall receive an allocation not subject to license fee but subject to supplemental fee of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in this district during the calendar year 1974, multiplied by 11.9 percent × .80.

* * * * *

(f) Pursuant to section 3A of Presidential Proclamation 3279, as amended by Proclamation 4175, interim allocations were made for the allocation period January 1, 1973 through December 31, 1973 to all persons who had received an allocation under former section 9 of Oil Import Regulation 1 (now § 213.9) for the allocation period January 1, 1972 through December 31, 1972. To the extent that such interim allocations were not charged against and deducted from the regular allocation made to a person pursuant to former section 9 for the allocation periods starting January 1, 1973 and extending through April 30, 1975, such interim allocation

will be charged against and deducted from the allocation made under this section for the period May 1, 1975 through April 30, 1976.

3. Section 213.12 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 213.12 Allocations; refiners; Districts I–IV and the Virgin Islands.

(a) For the allocation period May 1, 1975 through April 30, 1976, the Director shall make allocations not subject to license fee but subject to supplemental fee as provided in paragraph (b) of this section and within the quantities available under applicable levels established in Proclamation 3279, as amended, of imports into Districts I–IV among eligible persons having refinery capacity in these districts or the Virgin Islands. With respect to the Virgin Islands qualified refinery inputs shall be limited to crude oil charged to the refinery.

(b) Each eligible applicant shall receive an allocation not subject to license fee but subject to supplemental fee of imports of crude oil based on refinery inputs for the calendar year ending December 31, 1974. The allocation shall be computed according to the following schedule:

Average barrels per day input	Percent of input	Number of days
0 to 10,000	21.7	=
10 to 30,000	13.0	=
30 to 100,000	7.6	=
100,000 plus	3.8 ×	365

In addition, any imports of crude oil available for allocation pursuant to this section but not allocated pursuant to the above schedule shall be allocated to each eligible applicant in the same proportion that each eligible applicant's allocation as determined pursuant to the above schedule bears to the total of imports of crude oil allocated pursuant to the above schedule; however, no person shall receive an allocation in excess of 100 percent of such person's refinery inputs.

* * * * *

(e) Pursuant to section 3A of Presidential Proclamation 3279, as amended by Proclamation 4175, interim allocations were made for the allocation period January 1, 1973, through December 31, 1973, to all persons who had received an allocation under section 213.12 for the allocation period January 1, 1972, through December 31, 1972. To the extent that such interim allocations were not charged against and deducted from the regular allocation made to a person pursuant to section 213.12 for the allocation periods starting January 1, 1973, and extending through April 30, 1975, such interim allocation will be charged against and deducted from the allocation made under this section for the period May 1, 1975, through April 30, 1976.

* * * * *

4. Section 213.13 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 213.13 Allocations; refiners; District V, Guam, and American Samoa.

(a) For the allocation period May 1, 1975, through April 30, 1976, the Director shall allocate, as provided in paragraph (b) of this section and within the quantities available under applicable levels established in Proclamation 3279, as amended, imports into District V among eligible persons having refinery capacity in that district, Guam or American Samoa. With respect to Guam or American Samoa, qualified refinery inputs shall be limited to crude oil charged to the refinery.

(b) Each eligible applicant shall receive an allocation not subject to license fee but subject to supplemental fee of imports of crude oil based on refinery inputs for the calendar year ending December 31, 1974. The allocation shall be computed according to the following schedule:

Average barrels per day input	Percent of input	Number of days
0 to 10,000	67.5	=
10 to 30,000 ×	19.9	=
30,000 plus	6.6 ×	365

In addition, any imports of crude oil available for allocation pursuant to this section but not allocated pursuant to the above schedule shall be allocated to each eligible applicant in the same proportion that each eligible applicant's allocation as determined pursuant to the above schedule bears to the total of imports of crude oil allocated pursuant to the above schedule; however, no person shall receive an allocation in excess of 100 percent of such person's refinery inputs.

* * * * *

(e) Pursuant to section 3A of Presidential Proclamation 3279, as amended by Proclamation 4175, interim allocations were made for the allocation period January 1, 1973 through December 31, 1973 to all persons who had received an allocation under section 213.13 for the allocation period January 1, 1972 through December 31, 1972. To the extent that such interim allocations were not charged against and deducted from the regular allocation made to a person pursuant to section 213.13 for the allocation periods starting January 1, 1973 and extending through April 30, 1974, such interim allocation will be charged against and deducted from the allocation made under this section for the period May 1, 1975 through April 30, 1976.

* * * * *

5. Section 213.15 is amended by revising paragraph (d) to read as follows:

§ 213.15 Allocations of residual fuel oil—District I.

* * * * *

(d) For the allocation period May 1, 1974 through April 30, 1975, each eligible applicant under this section shall receive an allocation not subject to license fee but subject to supplemental fee of imports of residual fuel oil into District I to be used as fuel in District I computed according to the following formula:

$$\left[\frac{\text{Applicant's average B/D allocation made pursuant to § 213.15 for the allocation period May 1, 1974 through Apr. 30, 1975}}{\text{Average B/D allocations made pursuant to § 213.15 to all applicants for the allocation period May 1, 1974 to Apr. 30, 1975.}}\right] \times 2{,}320{,}000 \text{ B/D}$$

* * * * *

6. Section 213.16 is amended by revising paragraph (a) to read as follows:

§ 213.16 Finished products.

(a) For the allocation period May 1, 1975 through April 30, 1976, there is allocated to the Department of Defense 16,000 average barrels per day of imports of finished products not subject to license fee but subject to supplemental fee into Districts I–IV and 6,000 average barrels per day of imports of finished products not subject to license fee but subject to supplemental fee into District V. For the same allocation period, there is allocated 15,000 average barrels per day of imports of finished products not subject to license fee but subject to supplemental fee into Districts I–IV pursuant to Section 9 of Proclamation No. 3279, as amended, as that relates to the long-term allocation in subparagraph (5) of paragraph (k) of Section 11 of the Proclamation.

* * * * *

7. Section 213.20 is amended by revising paragraph (a) (2) as follows:

§ 213.20 Allocations of crude oil and unfinished oils—Puerto Rico.

(a) * * *

(2) For the allocation period May 1, 1975 through April 30, 1976, each eligible applicant under this paragraph shall receive an allocation not subject to license fee but subject to supplemental fee to import crude and unfinished oils into Puerto Rico computed according to the following formula:

$$\left[\frac{\text{Applicant's allocation pursuant to § 213.20(a) not subject to license fees of imports of crude and unfinished oils into Puerto Rico for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}{\text{Total allocations pursuant to § 213.20(a) not subject to license fees of imports of crude and unfinished oils into Puerto Rico for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}\right] \times 181{,}777 \text{ B/D}$$

* * * * *

8. Section 213.21 is amended by revising paragraph (a) (2) and paragraph (b) (2) to read as follows:

§ 213.21 Allocations of finished products—Puerto Rico.

(a) * * *

(2) For the allocation period May 1, 1975 through April 30, 1976, each eligible

application under this paragraph shall receive an allocation not subject to license fee but subject to supplemental fee to import finished products, other than residual fuel oil to be used as fuel in Puerto Rico, into Puerto Rico, computed according to the following formula:

$$\left[\frac{\text{Applicant's allocation pursuant to § 213.21(a) not subject to license fees of imports into Puerto Rico of finished products (other than residual fuel oil to be used as fuel in Puerto Rico) for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}{\text{Total allocations pursuant to § 213.21(a) not subject to license fees of imports into Puerto Rico of finished products (other than residual fuel oil to be used as fuel in Puerto Rico) for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}\right] \times 1,150 \text{ B/D}$$

(b) * * *

(2) For the allocation period May 1, 1975 through April 30, 1976, each eligible applicant under this paragraph shall receive an allocation not subject to license fee but subject to supplemental fee to import residual fuel oil to be used as fuel in Puerto Rico, into Puerto Rico, computed according to the following formula:

$$\left[\frac{\text{Applicant's allocation pursuant to § 213.21(b) not subject to license fees of imports into Puerto Rico of residual fuel oil to be used as fuel in Puerto Rico for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}{\text{Total allocations pursuant to § 213.21(b) not subject to license fees of imports into Puerto Rico of residual fuel oil to be used as fuel in Puerto Rico for the allocation period May 1, 1974 to Apr. 30, 1975, expressed in B/D.}}\right] \times 1,319 \text{ B/D}$$

* * * * *

9. Section 213.28 is revised as follows:

§ 213.28 Canadian imports—Districts I–IV.

(a) As used in this section, the term "Canadian imports" means imports from Canada of crude oil which has been produced in Canada and unfinished oils which have been derived from crude oil or natural gas produced in Canada and which have been transported into the United States by overland means or over waterways other than ocean waterways.

(b) To be eligible for an allocation of imports under this section, a person must have in Districts I–IV a facility capable of processing Canadian imports.

(c) The Director shall, in accordance with the terms of paragraph (d) (1) of this section make allocations for the allocation period May 1, 1975 through April 30, 1976 of not to exceed 677,600 average barrels daily of Canadian imports into Districts I–IV.

(d) (1) The Director shall make allocations not subject to license fees but subject to supplemental fee of Canadian imports to eligible applicants who received allocations of such imports for the period May 1, 1974 through April 30, 1975 pursuant to § 213.33 or from the Oil Import Appeals Board under § 213.26, or from both. Each such applicant shall be entitled to an allocation of Canadian imports calculated in accordance with the following formula:

$$\left[\frac{\text{Sum of each eligible applicant's allocation of Canadian imports for the allocation period May 1, 1974 to Apr. 30, 1975, pursuant to § 213.33 and § 213.26, expressed in B/D.}}{\text{Sum of all allocations of Canadian imports for the allocation period May 1, 1974 to Apr. 30, 1975 pursuant to § 213.33 and § 213.26, expressed in B/D.}}\right] \times 657,600 \text{ B/D}$$

(2) The Director shall issue before May 1, 1975 to each eligible applicant a license equal to one-half of the allocation calculated pursuant to paragraph (d) (1) of this section. Such licenses shall expire on October 31, 1975 unless extended by the Director. The Director shall issue before November 1, 1975 a second license to each eligible applicant equal to the remainder of the allocation calculated pursuant to paragraph (d) (1) of this section. Such licenses shall expire on April 30, 1976.

(e) (1) Except as provided for in paragraph (e) (2) of this section a person who imports Canadian imports must process all such imports in his own facility. For the purpose of this paragraph, blending by mechanical means does not constitute processing.

(2) (i) Canadian imports may be exchanged on a barrel for barrel basis for other Canadian imports but each person receiving crude oil or unfinished oils in the exchange must process the crude oil or unfinished oil received in his own facilities. Settlements, credits, monetary, or accounting adjustments reflecting the relative values of the oils involved in the exchange are permissible.

(ii) Canadian imports which are sold to meet the requirements of regulations published by the Federal Energy Administration shall not be subject to the provisions of paragraph (e) of this section.

(f) If a person who receives an allocation of Canadian imports under this section fails to import the total quantity of imports specified in the allocation, or if he fails to process all such imports (or Canadian imports received in exchange for such imports) in his facilities before July 1, 1976, or if he fails to meet the requirement of paragraph (e) of this section, then any allocation of Canadian imports for Districts I–IV to which such person may otherwise be entitled for the first allocation period beginning after April 30, 1976 shall be reduced by the Director by the amount of Canadian imports which such person has failed to import, or by the amount of Canadian imports and exchanged oil which such person has failed to process in his facilities before July 1, 1976 or by the amount of Canadian imports by which he failed to meet the requirements of paragraph (e) of this section, except that the Director need not make such a reduction to the extent that (1) such person demonstrates to the satisfaction of the Director that such failures were without such person's fault and were beyond his control, or (2) such person on or before September 1, 1975, in writing relinquishes all or part of an allocation made under this section and returns to the Director licenses issued thereunder.

(g) Any allocation relinquished by a person pursuant to paragraph (f) of this section shall be reallocated to all eligible applicants in the same proportion that each received an allocation under paragraph (d) (1) of this section.

(h) A person to whom an allocation is made by the Director under this section shall report and certify in writing to the Director, not later than July 15, 1975, (1) the total quantity of Canadian imports which that person imported during the period May 1, 1974 through April 30, 1975, pursuant to an allocation made under § 213.33 and (2) the quantity of such imports that were processed in his facilities before July 1, 1975. The amount so reported and certified shall be subject to verification by the Director. If a person to whom an allocation is made under this section fails to file by July 15, 1975 the written report and certification required by this paragraph, the Director shall suspend all licenses issued under an allocation made under this section until the written report and certification are received.

(i) An allocation made pursuant to this section shall not be sold, assigned or otherwise transferred.

(j) An application for an allocation under this section shall be made by letter or telegram to the Director, Oil Imports, P.O. Box 7414, Washington, D.C. 20044, unless an application has been previously filed. Applications must have been received by April 29, 1975. An application must contain the following information which shall be certified by an officer of the applicant:

(1) The nature of each of the applicant's facilities in which Canadian imports will be processed.

(2) The location of each such facility.

(3) The total barrels of Canadian imports and other qualified imports processed in each such facility during the calendar year ending December 31, 1974.

10. Section 213.32 is amended by revising paragraph (d) to read as follows:

§ 213.32 Allocations of low sulphur residual fuel oil—District V.

* * * * *

(d) For the allocation period May 1, 1975 through April 30, 1976, each eligible applicant under this section shall receive an allocation not subject to license fee but subject to supplemental fee to import low sulphur residual fuel oil into District V to be used as fuel in District V computed according to the following formula:

$$\left[\frac{\text{Applicant's average B/D allocation made pursuant to § 213.32 for the allocation period May 1, 1974 through Apr. 30, 1975}}{\text{Average B/D allocations made pursuant to § 213.32 to all applicants for the allocation period May 1, 1974 through Apr. 30, 1975}}\right] \times 60{,}489 \text{ B/D}$$

* * * * *

11. Section 213.34 is amended by revising paragraphs (b) and (e) to read as follows:

§ 213.34 Allocations of No. 2 fuel oil—District I.

* * * * *

(b) For the allocation period May 1, 1975 through April 30, 1976, 40,000 barrels per day of imports of No. 2 fuel oil, which is manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere, will be available for allocations in District 1 to eligible persons having qualified terminal inputs of No. 2 fuel oil in this district.

* * * * *

(e) For the allocation period May 1, 1975 through April 30, 1976, each eligible applicant under this section shall receive an allocation of imports not subject to license fee but subject to supplemental fee into District I of No. 2 fuel oil according to the following formula:

$$\left[\frac{\text{Applicant's average barrels per day allocation of No. 2 fuel oil into District I made pursuant to § 213.34 or § 213.26 for the allocation period Jan. 1, 1973 through Dec. 31, 1973,}}{\text{Total of all allocations expressed in barrels per day of No. 2 fuel oil into District I made pursuant to § 213.34 or § 213.26 for the allocation period Jan. 1, 1973 through Dec. 31, 1973.}}\right] \times 40{,}000 \text{ B/D}$$

* * * * *

12. Section 213.36 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 213.36 Canadian imports, District V.

(a) For the allocation period May 1, 1975, through April 30, 1976, the Director shall allocate, as provided in paragraph (c) of this section, approximately 224,000 average barrels daily of Canadian imports into District V among eligible persons having refinery capacity in this district.

* * * * *

(c) (1) The Director shall make allocations not subject to license fee but subject to supplemental fee of Canadian imports to each eligible applicant for the allocation period beginning May 1 of each year on the basis of the pro rata share of the allocation of Canadian imports into District V made to each applicant for the calendar year 1973, relative to the total of all allocations of Canadian imports made to all applicants for the calendar year 1973.

(2) The Director shall issue before May 1, 1975 to each eligible applicant a license equal to one-half of the allocation calculated pursuant to paragraph (c) (1) of this section. Such licenses shall expire on October 31, 1975 unless extended by the Director. The Director shall issue before November 1, 1975 a second license to each eligible applicant equal to the remainder of the allocation calculated pursuant to paragraph (c) (1) of this section. Such licenses shall expire on April 30, 1976.

(d) Each eligible applicant desiring an allocation under this section shall make application by letter to the Director by April 29, 1975. Such applications shall include the location of the facility in which the Canadian imports will be processed and shall be signed by an officer of the company.

* * * * *

13. Section 213.37 is amended by revising paragraphs (a) and (c) to read as follows:

§ 213.37 Mexican imports; Districts I–IV and District V.

(a) For the allocation period May 1, 1975 through April 30, 1976, the Director shall allocate, as provided in paragraph (c) of this section, approximately 26,000 average barrels daily of Mexican imports into Districts I–IV and District V.

* * * * *

(c) The Director shall make allocations not subject to license fee but subject to supplemental fee to each eligible applicant for the allocation period May 1, 1975 through April 30, 1976 and subsequent allocation periods on the basis of the pro rata share of Mexican imports made by each applicant during the calendar year 1972, relative to the total of all Mexican imports made by all applicants during the calendar year 1972.

* * * * *

14. Section 213.38 is amended by revising paragraph (c) to read as follows:

§ 213.38 Imports of Canadian natural gas products—Districts I–IV.

* * * * *

(c) For the allocation period May 1, 1975 through April 30, 1976, the Director shall make allocations not subject to license fee but subject to supplemental fee to eligible applicants in accordance with the following formula:

$$\left[\frac{\text{Eligible applicant's imports of Canadian natural gas products in 1973}}{\text{Total of Canadian natural gas products imported by all eligible applicants in 1973}}\right] \times 90{,}400 \text{ B/D}$$

[FR Doc.75-11220 Filed 4-25-75;10:13 am]

PART 213—OIL IMPORT REGULATIONS

Election Procedure for Refiners Located in United States Territories and Foreign Trade Zones

On April 3, 1975, the Federal Energy Administration (FEA) issued regulations implementing Proclamation No. 4355, amending Proclamation No. 3279, as amended, which established the Mandatory Oil Import Program (40 FR 16047, April 9, 1975). Section 2 of Proclamation No. 4355 (Section 3(a)(5) of Proclamation No. 3279, as amended) provided that effective February 1, 1975:

> In order to ensure that refiners located in territories of the United States and in foreign trade zones are treated not less favorably than other United States refiners, the Administrator shall by regulation determine at what point crude oil, unfinished oils and finished products shipped into United States territories and foreign trade zones shall become subject to the fees imposed pursuant to paragraphs 3(a)(1)(i)–(iii) [of Proclamation No. 3279, as amended].

FEA's regulations implementing this provision provided that refiners located in United States territories and foreign trade zones could elect to continue their present treatment, under which supplemental fees were assessed at the time that product enters United States customs territory, or, they could elect to incur the fee at the time that feedstock is run to still in the refiner's refinery. Refiners were required to elect one of these options by April 24, 1975, and elections once made would be irrevocable.

However, shortly before the deadline for election, FEA determined that its regulations did not completely carry out the mandate of Proclamation No. 4355, to provide equality between domestic and offshore refiners, with respect to the transition from refiners' present treatment to their treatment under the concept of "runs to stills". This is because domestic refiners could have imported, and did import, large quantities of crude oil during January when no fee attached. This crude could be placed in inventory and run in February. Moreover crude received in February could be placed in bond, thus further deferring fees while refiners used up their pre-February inventory. However, offshore refiners with crude in inventory prior to February 1, would, under the "run to stills" concept, have incurred the fee when that pre-February crude was run. In order to determine the best means of removing this inequity, and because FEA's determination would be material to the choice of option, FEA extended the deadline to April 28, 1975.

In accordance with Proclamation No. 3279, as amended by Proclamation No. 4355, FEA hereby amends § 213.35 of its regulations to remove the foregoing inequity, and to permit the affected refiners to make an informed election by April 28, 1975. Such election shall be

retroactive to February 1, 1975, the effective date of Proclamation No. 4355.

Under the amended regulation, refiners electing to be treated under the "runs to stills" concept shall be assessed supplemental fees on crude oil or unfinished oil as feedstocks run to stills in the refiner's refinery during each calendar month (less adjustment for exports), except that runs to stills from feedstocks which were in the refiner's storage tanks prior to February 1, 1975 shall not be subject to the supplemental fees. For the purpose of establishing the quantity of feedstocks in the refiner's tanks prior to February 1, refiners are required to certify the quantity of feedstocks in the closing inventory in their tanks as of January 31. Refiners' certifications will be subject to verification by FEA. Under this amendment, the cash flow and competitive positions of offshore refiners relative to domestic refiners can be brought into parity.

FEA has concluded that since an emergency exists, the foregoing amendment must be made effective immediately. The cash flow and competitive position of at least one offshore refiner is already strained, and if implementation of this amended regulation were delayed it could cause serious financial hardship to the refiner involved.

Accordingly, the provisions of sections 7(i)(1)(B) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), with respect to notice and opportunity to comment are hereby waived upon a finding that strict compliance would seriously injure the public health, safety, and welfare. However, FEA will receive public comments on the amendment issued today. Interested persons are invited to submit written data, views, or arguments with respect to the revision and amendments to Executive Communications, Room 3309, Federal Energy Administration, Box CZ, The Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation "Amendment of Election Procedures for Offshore Refiners." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., May 19, 1975, will be considered by the Federal Energy Administration in evaluating the revision and amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

The public has already received opportunity to comment on the regulations implementing Proclamation No. 4355, prior to their issuance on April 3, 1975.

The review provisions of section 7(c)(2) of the Federal Energy Administration Act of 1974 which provide for submission of proposed rules for comment by the Administrator of the Environmental Protection Agency are also hereby waived for a period of 14 days, as provided for in that section, upon a finding that there is an emergency situation which requires immediate action. The basis of this finding is set forth above.

Since this amendment affects a very small number of refiners, and a correspondingly small amount of commerce, FEA has determined that it is not "likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses." Therefore, the requirement of section 7(i)(1)(C) of the Federal Energy Administration Act of 1974 to afford the public an opportunity for oral presentation of views, data, and arguments is hereby deemed not to apply in this case.

[Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185; Trade Expansion Act of 1962, P.L. 87-794, as amended; Proclamation No. 3279, 24 FR 1781, as amended by Proclamation No. 4210, 38 FR 9645, Proclamation No. 4227, 38 FR 16195, Proclamation No. 4317, 38 FR 35103, Proclamation No. 4341, 40 FR 3956, and Proclamation No. 4355, 40 FR 10437].

In consideration of the foregoing, Part 213 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective February 1, 1975.

Issued in Washington, D.C. April 28, 1975.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

Section 213.35 is amended in paragraph (a)(9)(i) as follows:

§ 213.35 Allocation and fee paid licenses for imports of crude oil, unfinished oils, and finished products.

(a) * * *

(9) * * *

(i) For refiners electing to be treated under this paragraph (a)(9)(i), supplemental fees shall be assessed on crude oil or unfinished oil as feedstocks run to stills in the refiner's refinery during each calendar month, less any shipments from the refinery for consumption outside United States customs territory, except that runs to stills from feedstocks which were in the refiner's storage tanks prior to February 1, 1975 shall not be subject to the supplemental fees. For the purpose of establishing the quantity of feedstocks in the refiner's tanks prior to February 1, 1975, each refiner electing to be treated under this paragraph (a)(9)(i) shall certify to the Director the quantity of feedstocks in the closing inventory in the refiner's tanks as of January 31, 1975. Such certification shall be subject to verification by representatives of the Federal Energy Administration. In those cases where sales are made to the Department of Defense F.O.B. the Virgin Islands or a foreign trade zone, such sales may be deducted from runs to stills in determining the liability of the refiner. The Department of Defense is liable for payment of supplemental fees if the material purchased is imported into United States customs territory. No later than ten (10) days after the close of each month, the refiner shall certify to the Director runs to stills of crude oil or unfinished oils and shipments from the refinery for consumption outside United States customs territory during the preceding month. Payment of the supplemental fee shall be made by the refiner by the last day of the month following the month the feedstocks are run to stills. Effective May 1, 1975 and each month thereafter, each refiner must file a bond with a surety on the list of acceptable sureties on Federal bonds, maintained by the Bureau of Government Financial Operations, Department of the Treasury, in a sum not less than the applicable fee multiplied by the total number of barrels processed by the refiner in the last month but one preceding the month for which the bond is posted.

* * * * *

[FR Doc.75-11423 Filed 4-28-75;3:48 pm]

Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 9—FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

Investment in Variable Amount Note

This amendment is issued pursuant to the authority conferred in section 1(j) of Pub. L. 87-722, 76 Stat. 668, 12 U.S.C. 92a. Notice of the proposed rule making was published in the FEDERAL REGISTER (40 FR 4151, Jan. 28, 1975). A number of comments were received following publication and have been given consideration.

This amendment differs from the proposed amendment in that its scope is more limited. As proposed, the amendment would have prohibited banks from investing trust funds collectively on a short-term basis in a variable amount note if a bank or a bank holding company, or an affiliate of a bank or a bank holding company, were the borrower. It was decided that this proposal needlessly discriminated against all of a particular class of borrowers. The examination process can be utilized to correct investments in borrowers of this class which are subject to objection. Accordingly, in order to facilitate the policing of these notes by the examiners of this Office, the Regulation as now promulgated requires that each bank which is collectively investing its trust department funds in such a note maintain that note on its premises, and not mix such funds with trust department funds of other banks. It should be noted that banks may not lend trust funds through this type of a note to their own affiliates under any circumstances.

This amendment will become effective July 1, 1975. Variable amount note arrangements which do not conform to this amended regulation should be terminated by that date. Banks which will have some difficulty terminating notes by that time should apply to the Comptroller for an extension thereof under the authority of 12 CFR 9.18(c)(5).

Part 9 of 12 CFR is amended by redesignating paragraph (c) (2) of § 9.18 as paragraph (c) (2) (i), by adding a semicolon and the word "or" in lieu of the period at the end thereof, and by adding a new paragraph (c) (2) (ii). Changes in the text are as follows:

§ 9.18 Collective investment.

* * * * *

(c) * * *

(2) (i) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(ii) On a short-term basis in a variable amount note of a borrower or prime credit: *Provided,* That such note shall be maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts: *Provided further,* That the bank owns no participation in the loans or obligations authorized under paragraphs (c) (2) (i) or (ii) hereof, and has no interest in any investment therein except in its capacity as fiduciary.

Dated: April 25, 1975.

[SEAL] JAMES E. SMITH,
Comptroller of the Currency.

[FR Doc.75-11285 Filed 4-29-75;8:45 am]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 75-304]

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 526—LIMITATIONS ON RATE OF RETURN

Amendment Relating to Application of Early Withdrawal Penalty

SUMMARY

APRIL 2, 1975.

The following summary of the amendment adopted by this Resolution is provided for the reader's convenience and is subject to the full explanation in the following preamble and to the specific provisions in the regulation.

I. *Existing regulation.* Requires noninsured member institutions to impose a penalty for early withdrawals from certificate accounts opened on or after November 1, 1973.

II. *Proposed amendment.* A. Would have prohibited the imposition of a penalty for withdrawals from single-ownership certificate accounts by the executor or administrator thereof following the account holder's death for accounts opened on or after the effective date of the proposal.

B. Would have permitted the waiver of the required penalty for such withdrawals for accounts opened before the proposal's effective date.

III. *Final amendment.* A. Permits waiver of required penalty:

1. from single-ownership certificate accounts made by the deceased account holder's personal representative (including an executor or administrator), and

2. from single-ownership testamentary accounts by the beneficiary following the owner's death.

B. Such penalties may be waived with respect to all such accounts opened on or after November 1, 1973.

By Resolution No. 74-297, dated April 12, 1974, the Board proposed to amend Part 526 of the regulations for the Federal Home Loan Bank System (12 CFR Part 526) by amending § 526.7 thereof to permit waiver of early withdrawal penalties in certain circumstances, as discussed below. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on April 23, 1974 (39 FR 14358-59), with an invitation for interested persons to submit written comments by May 22, 1974. By two companion Resolutions (Resolution Nos. 74-298 and 74-299; April 12, 1974), the Board also proposed collateral amendments to the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) and the rules and regulations for Insurance of Accounts (12 CFR Part 563).

Section 526.7 requires a member institution which is not an insured institution to impose a penalty on a withdrawal before maturity from a certificate account issued on or after November 1, 1973—the effective date of § 526.7. The proposal would have amended said § 526.7 by adding new language thereto. The first additional provision would have prohibited such a member institution from penalizing such a withdrawal from a single-ownership certificate account issued on or after the effective date of the proposal by an executor or administrator of the estate of the deceased owner of such account. The second additional provision would have permitted such a member institution to waive the required penalty in connection with an early withdrawal from a single-ownership certificate account issued before the effective date of the proposal (but on or after November 1, 1973) by an executor or administrator of the estate of the deceased owner of such account.

The amendments to § 526.7 adopted by this resolution differ from the proposal in three respects. First, waivers are permissible with respect to single-ownership testamentary accounts as well as regular single-ownership accounts. Testamentary accounts are described in § 564.4 as revocable trust accounts and include Totten trust accounts and payable on death accounts. A withdrawal from a single-ownership testamentary account would have to be made by the beneficiary of the account. The amendment does not specify any time period with which a withdrawal by a beneficiary would have to be made. However, as the waiver of the penalty is permissive a member institution could require that any such withdrawal be made within a specified period following the account holder's death.

Second, withdrawals from non-testamentary single-ownership accounts could be made by any personal representative of the deceased owner of such account—not just the executor or administrator. The more general term "personal representative" is intended to include executors and administrators as well as individuals representing small estates where there is no executor or administrator.

Third, member institutions may waive the penalty imposed pursuant to § 526.7 for any of these two types of certificate accounts issued on or after November 1, 1973. In addition, the amendments redesignate present § 526.7 as § 526.7(a); the amendments adopted by this resolution are set forth in new § 526.7(b).

Accordingly, on the basis of its consideration of all relevant material presented by interested persons and otherwise available and after consulting with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board hereby amends § 526.7 to read as set forth below, effective May 2, 1975.

§ 526.7 Penalty for early withdrawal.

(a) With respect to each certificate account issued on or after November 1, 1973 (except as provided in paragraph (b) of this section), each member institution which is not an insured institution shall impose the following conditions on withdrawal from such an account before the expiration of its fixed or minimum term or qualifying period: (1) The account holder shall receive interest or dividends from the date of issuance of such account on the amount withdrawn at a rate not in excess of the rate being paid on regular accounts; and (2) the account holder shall also pay a penalty in an amount not less than the lesser of (i) the interest or dividends at such rate for 90 days (3 months) on the amount withdrawn or (ii) all interest or dividends at such rate (since issuance or renewal of the certificate account) on the amount withdrawn.

(b) Such a member institution need not penalize a withdrawal of all or any portion of a certificate account opened on or after November 1, 1973, before the expiration of the fixed or minimum term or qualifying period of such account if (1) such account is a "single-ownership account" (as the quoted term is used in § 564.3 of this chapter) and the withdrawal is made by the personal representative (including an executor or administrator) of the deceased owner of such account, or (2) such account is a single-ownership "testamentary account" (as the quoted term is used in § 564.4 of this chapter) and the withdrawal is made by the beneficiary of such account following the death of the owner thereof.

(Sec. 5B, 47 Stat. 727, as amended; (12 U.S.C. §§ 1425b, 1437). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

[FR Doc.75-11339 Filed 4-29-75;8:45 am]

[No. 75-305]

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Amendments Relating to Application of Early Withdrawal Penalty

APRIL 2, 1975.

SUMMARY

The following summary of the amendments adopted by this Resolution is provided for the reader's convenience and is subject to the full explanation in the following preamble and to the specific provisions in the regulations.

I. *Existing regulations.* Require Federal associations to impose a penalty for early withdrawals from certificate accounts.

II. *Proposed amendments.* A. Would have prohibited the imposition of a penalty for withdrawals from single-ownership certificate accounts by the executor or administrator thereof following the account holder's death for accounts opened on or after the effective date of the proposal.

B. Would have permitted the waiver of the required penalty for such withdrawals for accounts opened before the proposal's effective date.

III. *Final amendments.* A. Permit waiver of required penalty:

1. From single-ownership certificate accounts made by the deceased account holder's personal representative (including an executor or administrator), and

2. From single-ownership testamentary accounts by the beneficiary following the owner's death.

B. Such penalties may be waived with respect to all such accounts, regardless of when opened.

By Resolution No. 74-298, dated April 12, 1974, the Board proposed to amend Part 545 of the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) by amending §§ 545.1-4 and 545.3-1 thereof to permit waiver of early withdrawal penalties in certain circumstances, as discussed below. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on April 23, 1974 (39 FR 14359), with an invitation for interested persons to submit written comments by May 22, 1974. By two companion Resolutions (Resolution Nos. 74-297 and 74-299; April 12, 1974), the Board also proposed collateral amendments to the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) and the rules and regulations for Insurance of Accounts (12 CFR Part 563).

Sections 545.1-4 and 545.3-1 require Federal associations to impose a penalty on a withdrawal before maturity from fixed-term savings deposits and certificate accounts. The proposal would have amended said §§ 545.1-4 and 545.3-1 by adding new language thereto to prohibit a Federal association from penalizing a withdrawal before maturity from a single-ownership fixed-term deposit or certificate account issued on or after the effective date of the amendment by an executor or administrator of the estate of the deceased owner of such deposit or account. This additional language would also have permitted a Federal association to waive the required penalty in connection with an early withdrawal from a single-ownership fixed-term savings deposit or certificate account issued before the effective date of the amendment by an executor or administrator of the estate of the deceased owner of such deposit or account.

The amendments to §§ 545.1-4 and 545.3-1 adopted by this Resolution differ from the proposal in three respects. First, waivers are permissible with respect to single-ownership testamentary accounts as well as regular single-ownership accounts. Testamentary accounts are described in § 564.4 as revocable trust accounts and include Totten trust accounts and payable on death accounts. A withdrawal from a single-ownership testamentary account would have to be made by the beneficiary of the account. The amendment does not specify any time period within which a withdrawal by a beneficiary would have to be made. However, as the waiver of the penalty is permissive a Federal association could require that any such withdrawal be made within a specified period following the account holder's death.

Second, withdrawals from non-testamentary single-ownership accounts could be made by any personal representative of the deceased owner of such account—not just the executor or administrator. The more general term "personal representative" is intended to include executors and administrators as well as individuals representing small estates where there is no executor or administrator.

Third, Federal associations may waive the penalty imposed pursuant to §§ 545.1-4 or 545.3-1 for any of these two types of certificate accounts regardless of when issued.

Accordingly, on the basis of its consideration of all relevant material presented by interested persons and otherwise available and after consulting with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board hereby amends §§ 545.1-4 and 545.3-1 as set forth below, effective May 2, 1975.

1. Amend § 545.1-4(f) (4) as follows:

§ 545.1-4 Other savings deposits.

* * * * *

(f) *Withdrawal prior to expiration of term.* (1) Except as provided in paragraph (f) (4) of this section, in the event of withdrawal of all or any portion of a fixed-term savings deposit prior to the expiration of its term—

* * * * *

(4) A Federal association need not penalize a withdrawal of all or any portion of a fixed-term savings deposit prior to the expiration of its term if (i) such deposit is a "single-ownership account" (as the quoted term is used in § 564.3 of this chapter) and withdrawal is made by the personal representative (including an executor or administrator) of the deceased owner of such account, or (ii) such deposit is a single-ownership "testamentary account" (as the quoted term is used in § 564.4 of this chapter) and the withdrawal is made by the beneficiary of such account following the death of the owner thereof.

2. Amend § 545.3-1(c) (3) and (6) as follows:

§ 545.3-1 Distribution of earnings at variable rates.

* * * * *

(c) *Form of certificate.* * * *

(3) Except as provided in paragraph (c) (6) of this section, in the event of withdrawal of all or any portion of a certificate account issued pursuant to paragraph (b) (3) of this section prior to the completion of the time eligibility period set forth in the certificate evidencing such account—

* * * * *

(6) A Federal association need not penalize a withdrawal of all or any portion of a certificate account issued pursuant to paragraph (b) (3) of this section prior to the completion of its time eligibility period if (i) such account is a "single-ownership account" (as the quoted term is used in § 564.3 of this chapter) and the withdrawal is made by the personal representative (including an executor or administrator) of the deceased owner of such account, or (ii) such account is a single-ownership "testamentary account" (as the quoted term is used in § 564.4 of this chapter) and the withdrawal is made by the beneficiary of such account following the death of the owner thereof.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary.

[FR Doc.75-11340 Filed 4-29-75;8:45 am]

[No. 75-306]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Amendments Relating to Application of Early Withdrawal Penalty

SUMMARY

APRIL 2, 1975.

The following summary of the amendments adopted by this Resolution is provided for the reader's convenience and is subject to the full explanation in the following preamble and to the specific provisions in the regulations.

I. *Existing regulations.* Require insured institutions to impose a penalty for early withdrawals from certificate accounts.

II. *Proposed amendments.* A. Would have prohibited the imposition of a

penalty for withdrawals from single-ownership certificate accounts by the executor or administrator thereof following the account holder's death for accounts opened on or after the effective date of the proposal.

B. Would have permitted the waiver of the required penalty for such withdrawals for accounts opened before the proposal's effective date.

III. *Final amendments.* A. Permit waiver of required penalty:

1. From single-ownership certificate accounts made by the deceased account holder's personal representative (including an executor or administrator), and

2. From single-ownership testamentary accounts by the beneficiary following the owner's death.

B. Such penalties may be waived with respect to all such accounts, regardless of when opened.

By Resolution No. 74-299, dated April 12, 1974, the Board proposed to amend Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) by amending §§ 563.3-1 and 563.3-2 thereof to permit waiver of early withdrawal penalties in certain circumstances, as discussed below. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on April 23, 1974 (39 FR 14359-60), with an invitation for interested persons to submit written comments by May 24, 1974. By two companion resolutions (Resolution Nos. 74-297 and 74-298; April 12, 1974), the Board also proposed collateral amendments to the regulations for the Federal Home Loan Bank System (12 CFR Part 526) and the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545).

Sections 563.3-1 and 563.3-2 require insured institutions to impose a penalty on a withdrawal before maturity from fixed-rate, fixed-term accounts and certificate accounts. The proposal would have amended said §§ 563.3-1 and 563.3-2 by adding new language thereto to prohibit insured institutions from penalizing a withdrawal before maturity from a single-ownership fixed-rate, fixed-term account or certificate account issued on or after the effective date of the amendment by an executor or administrator of the estate of the deceased owner of such account. This additional language would also have permitted an insured institution to waive the required penalty in connection with an early withdrawal from a single-ownership fixed-rate, fixed-term account or certificate account issued before the effective date of the amendment by an executor or administrator of the estate of the deceased owner of such account.

The amendments to §§ 563.3-1 and 563.3-2 adopted by this resolution differ from the proposal in three respects. First, waivers are permissible with respect to single-ownership testamentary accounts as well as regular single-ownership accounts. Testamentary accounts are described in § 564.4 as revocable trust accounts and include Totten trust accounts and payable on death accounts. A withdrawal from a single-ownership testamentary account would have to be made by the beneficiary of the account. The amendment does not specify any time period within which a withdrawal by a beneficiary would have to be made. However, as the waiver of the penalty is permissive, an insured institution could require that any such withdrawal be made within a specified period following the account holder's death.

Second, withdrawals from non-testamentary single-ownership accounts could be made by any personal representative of the deceased owner of such account—not just the executor or administrator. The more general term "personal representative" is intended to include executors and administrators as well as individuals representing small estates where there is no executor or administrator.

Third, insured institutions may waive the penalty imposed pursuant to §§ 563.3-3-1 and 563.3-2 for any of these two types of certificate accounts, regardless of when issued.

Accordingly, on the basis of its consideration of all relevant material presented by interested persons and otherwise available and after consulting with the Board of Governors of the Federal Reserve Board and the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board hereby amends §§ 563.3-1 and 563.3-2 as set forth below, effective May 2, 1975.

1. Amend § 563.3-1(d)(4) as follows:

§ 563.3-1 Fixed-rate, fixed-term accounts.

* * * * *

(d) *Withdrawal prior to expiration of term.* * * *

(4) An insured institution need not penalize a withdrawal of all or any portion of a fixed-rate, fixed-term account prior to the expiration of its term if (i) such account is a "single-ownership account" (as the quoted term is used in § 564.3 of this chapter) and the withdrawal is made by the personal representative (including an executor or administrator) of the deceased owner of such account, or (ii) such account is a single-ownership "testamentary account" (as the quoted term is used in § 564.4 of this chapter) and the withdrawal is made by the beneficiary of such account following the death of the owner thereof.

2. Amend § 563.3-2(d)(3) as follows:

§ 563.3-2 Certificates evidencing other accounts.

* * * * *

(d) *Provisions relating to early withdrawal.* * * *

(3) An insured institution need not penalize a withdrawal of all or any portion of a certificate account prior to the completion of its time eligibility period if (i) such account is a "single-ownership account" (as the quoted term is used in § 564.3 of this chapter) and the withdrawal is made by the personal representative (including an executor or administrator) of the deceased owner of such account, or (ii) such account is a single-ownership "testamentary account" (as the quoted term is used in § 564.4 of this chapter) and the withdrawal is made by the beneficiary of such account following the death of the owner thereof.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; (12 U.S.C. 1725, 1726). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, JR., *Assistant Secretary.*

[FR Doc.75-11341 Filed 4-29-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-906; Amdt. 40]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Reasonable Level of Compensation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., April 25, 1975.

By EDR-262, January 15, 1974, the Board initiated a full-scale review of minimum rates applicable to Logair and Quicktrans domestic cargo charter air transportation services performed for the Department of Defense (DOD), as procured by the Military Airlift Command (MAC). Prospective interim final rates were proposed and established effective January 15, 1974, by ER-853,[1] based on reported operating results for the year ended September 30, 1973.

The interim final rate concept, as established by the Board, calls for continued monitoring of recurring reports of annual operations in order to maintain fair and reasonable prospective compensation for MAC contract services pending completion of the full-scale review.[2] Accordingly, the Board adopted ER-888[3] further amending the interim domestic MAC final rates to reflect rate adjustments indicated by the reported results for fiscal year 1974. An analysis of Logair/Quicktrans operations by Overseas National Airways, Inc. (ONA) and Saturn Airways, Inc. (Saturn) for calendar year 1974 has now been completed, the results of which are set forth in the attached appendices. Adjustments to the reported expense and investment data have been made consistent with our treatment in the prior determinations for interim final rate amendments. ONA's reported results for operations with L-188 aircraft have been eliminated from the rate considerations since the

[1] Adopted May 17, 1974.
[2] See ER-819, August 28, 1973, at 11.
[3] November 14, 1974.

carrier has sold all its L–188 aircraft.[4]

The adjusted reported returns on investment for calendar year 1974 operations, as set out in Appendix C, were as follows: 5.84 and 7.19 percent for Saturn's L–100 Logair and Quicktrans operations, respectively; 18.04 and —46.48 percent for Saturn's L–188 Logair and Quicktrans services, respectively; and 8.88 percent for ONA's DC–9 Logair services. Accordingly, as set forth in Appendix B, Saturn requires revenue increases of $1,382,590 and $766,459, respectively, for its L–100 Logair and Quicktrans operations and $83,131 for its L–188 Quicktrans services to achieve the recognized level of 10.5 percent return on investment. Similarly, additional revenues of $198,222 are required for the common-rated DC–9/L–188 Logair services. Therefore, increases are required in the current linehaul rates for Logair and Quicktrans services with L–100 aircraft of 12.43 and 8.69 percent, respectively; and, 1.59 and 57.60 percent, respectively, for DC–9/L–188 Logair and Quicktrans operations. The high percentage increase for the DC–9/L–188 Quicktrans rate is apparently due to the considerably reduced volume of services being contracted by MAC for this domestic cargo operation with this aircraft type, providing a small operational base to spread the carrier's fixed operating costs.[5] No adjustment is being made herein to the DC–8/61/63 rates established in ER–853 and retained in ER–888.

The amendments reflecting the foregoing increases are to be effective seven calendar days after adoption of this rule, in conformance with the procedure followed in ER–883. Interested persons may file petitions for reconsideration of the within amendments. Twelve (12) copies of such petitions shall be filed with the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 on or before May 14, 1975. Copies of any petitions filed will be available for inspection and copying in the Docket Section, Room 710, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. The filing of petitions shall not operate to stay the effective date of the within amendment. Any action taken in response to such petitions will be effective prospectively.

In view of the carriers' need for prompt rate relief, we find good cause exists to make the amendments effective on less than thirty (30) days' notice. Also in order to eliminate retroactive application of final adjusted interim rates, as more fully set forth in ER–879, October 22, 1974, we find that notice and public procedure hereon are unnecessary.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) effective May 2, 1975, as follows:

Amend the table of rates § 288.7(b) to read as follows:

§ 288.7 *Reasonable level of compensation.*

* * * * *

(b) For Logair and Quicktrans services, other than specified in paragraph (c) of this section:

Aircraft type	Linehaul rate per course-flown statute mile		Rate per directed landing
	Logair	Quicktrans	
DC–9–30	$1.8111	$2.0017	$150
L–188C			
L–100–20/30	2.6229	2.6325	150
DC–8–61/63	4.3262	4.3779	275

* * * * *

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758 and 771, as amended; 49 U.S.C. 1324, 1373 and 1386.)

By the Civil Aeronautics Board.

Effective: May 2, 1975.

Adopted: April 25, 1975.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[4] For domestic minimum MAC rate purposes, services performed with L–188 and DC–9 aircraft are common rated. In ER–888, results for operations with L–188 aircraft were not included in the data base on the basis that this aircraft type had been eliminated from the fiscal year 1975 MAC domestic procurement program. However, Saturn has received a contract for operations with L–188 aircraft, and accordingly, the results of its operations with this aircraft type have been included in the present adjustments.

[5] While the percentage increase is large, the related revenue impact is only $83,000.

APPENDIX A

DOMESTIC MAC OPERATIONS—*Current and proposed linehaul rates based on reported results—year ended Dec. 31, 1974*

Aircraft type	Current linehaul rates per course-flown statute mile [1]		Percentage increase required based on reported results		Amended linehaul rates per course-flown statute mile	
	Logair	Quicktrans	Logair	Quicktrans	Logair	Quicktrans
DC-9-30	$1.8152	$1.7079	1.59	57.60	$1.8441	$2.6917
L-188C						
L-100-20/30	2.3329	2.4630	12.43	8.69	2.6229	2.6825

[1] As established in ER-888.

APPENDIX B

MAC Domestic Carriers—Computed revenues and required rate adjustment—year ended Dec. 31, 1974

	Revenue plane miles	Directed landings	Computed revenues [1] (in thousands of dollars)			Net operating income (in thousands of dollars)			Percent revenue increase required	Percent linehaul rate increase required [4]
			Linehaul	Directed landing	Total	Reported [2]	Recognized requirement [3]	Required increase		
Saturn:										
L-100 Logair	4,766,676	8,023	11,120	1,203	12,324	1,035	2,433	1,333	11.22	12.43
L-100 Quicktrans	3,572,996	6,118	8,818	918	9,736	1,137	1,901	765	7.87	8.69
L-188 Logair	2,214,530	6,175	4,020	926	4,946	340	198	(142)	(2.87)	(3.54)
L-188 Quicktrans	84,508	121	144	18	162	(66)	17	83	51.23	57.60
Overseas:										
DC-9 Logair	4,654,859	9,877	8,450	1,482	9,931	1,039	2,329	340	3.42	4.03
Common-rated service: [5]										
L-188 Logair/DC-9 Logair	6,869,389	16,052	12,469	2,408	14,877	2,329	2,207	198	1.33	1.59

[1] Based on rates established in ER-888.
[2] See appendix C.
[3] See appendix D.
[4] Required operating income increase as a percent of computed linehaul revenues per ER-888 rates.
[5] Logair services—performed with DC-9 and L-188 aircraft.
NOTE: Totals may not add due to rounding.

APPENDIX C

MAC Domestic Carriers—Adjusted operating results, year ended Dec. 31, 1974

[In thousands of dollars]

	Computed revenues [1]	Reported operating expenses	Depreciation expense adjustment [2]	Other adjustments [3]	Adjusted operating expenses	Net operating income	Interest expense	Income taxes (tax at 43 percent)	Net income after taxes and before interest	Percent return on investment [4]
Saturn:										
L-100 Logair	12,324	11,601	----------	(333)	11,269	1,055	737	153	903	5.84
L-100 Quicktrans	9,736	8,068	----------	(70)	8,599	1,137	573	271	826	7.19
L-188 Logair	4,946	4,694	(88)	----------	4,606	340	348	----------	340	18.04
L-188 Quicktrans	162	235	(7)	----------	228	(66)	12	----------	(66)	(46.43)
Overseas: DC-9 Logair	9,931	8,212	(130)	(133)	7,942	1,989	(131)	1,018	971	8.88
Common-rated service: [5] L-188 Logair/DC-9 Logair	14,877	12,906	(224)	(133)	12,543	2,329	216	1,018	1,311	10.23

[1] Pursuant to ER-888 multielement rates. The appropriate linehaul and direct landing rates were applied to reported revenue-miles flown and directed landings, respectively.
[2] Regulatory depreciation expense for flight equipment adjusted to reflect reduction in recognized investment related to recognized aircraft utilization.
[3] Operating expenses reduced by 2.81 percent for L-100 Logair, 0.79 percent for L-100 Quicktrans and 0.72 percent for DC-9 as per ER-733.
[4] On adjusted average investment, appendix D.
[5] Logair services—performed with DC-9 and L-188 aircraft.
NOTE: Totals may not add due to rounding.

APPENDIX D

MAC DOMESTIC CARRIERS.—Recognized return on adjusted investment, year ended Dec. 31, 1974

	Recognized daily utilization ER-733	As reported—Year ended Dec. 31, 1974			Adjusted aircraft days assigned	Percentage change days assigned	Reported average investment	Adjustment for recognized utilization	Other adjustments [2]	Adjusted average investment	Recognized return on investment [3]
		Daily aircraft utilization	Revenue hours	Aircraft days assigned							
Saturn:											
L-100 Logair	9.0	9.2	15,673.3	1,697	1,742	----------	$15,513,097	----------	$(69,809)	$15,443,288	$2,437,695
L-100 Quicktrans	8.5	8.9	12,157.5	1,367	1,430	----------	12,094,201	----------	(47,163)	12,047,093	1,903,757
L-188 Logair	7.5	5.7	7,322.0	1,276	976	(23.49)	2,360,450	$(479,432)	----------	1,880,968	168,135
L-188 Quicktrans	7.0	5.0	258.6	52	37	(28.04)	185,664	(43,846)	----------	141,818	17,221
Overseas:											
DC-9 Logair	8.0	7.2	10,913.7	1,524.3	[1] 1,364.2	(10.50)	12,108,235	(1,174,700)	----------	10,933,585	2,329,055

[1] Reported revenue hours divided by the recognized utilization in ER-733.
[2] Average invested capital reduced by 0.45 percent for L-100 in Logair service and 0.39 percent for L-100 in Quicktrans service, as per ER-733.
[3] 10.5 percent return plus provision for taxes computed at 48 percent.

[FR Doc.75-11308 Filed 4-29-75;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Provisional Designations of Boards of Trade as Contract Markets; Provisional Registration of Futures Commission Merchants and Floor Brokers

Correction

In FR Doc. 75-10285 appearing at page 17406 in the FEDERAL REGISTER of Friday, April 18, 1975 the following correction should be made.

On page 17408, third column, the line below the authority citation should read, "Issued: April 17, 1975".

Title 20—Employees' Benefits

CHAPTER VIII—JOINT BOARD FOR THE ENROLLMENT ACTUARIES

PART 900—STATEMENT OF ORGANIZATION

Title 20, CFR, is hereby revised by the addition of a new Chapter VIII, entitled Joint Board for the Enrollment of Actuaries, and the inclusion in such Chapter of a Part 900, entitled Statement of Organization, under the Employee Retirement Income Security Act of 1974, as set forth below.

Part 900 of Chapter VIII of Title 20, CFR, reads as follows:

Sec.
900.1 Basis.
900.2 Establishment.
900.3 Composition.
900.4 Meetings.
900.5 Staff.
900.6 Offices.
900.7 Delegations of Authority.

AUTHORITY: Sec. 3041-2, Pub. L. 93-406, 93d Congress, 1st Sess., 88 Stat. 829, 1002 (29 U.S.C. 1241-2).

§ 900.1 Basis.

This Statement is issued by the Joint Board for the Enrollment of Actuaries (the Joint Board) pursuant to the requirement of section 552 of Title 5 of the United States Code that every agency shall publish in the FEDERAL REGISTER a description of its central and field organization

§ 900.2 Establishment.

The Joint Board has been established by the Secretary of Labor and the Secretary of the Treasury pursuant to section 3041 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1241). Bylaws of the Board have been issued by the two Secretaries.[1]

[1] Copy filed with the Office of the Federal Register. Copies may also be obtained from the Executive Director of the Board.

§ 900.3 Composition.

Pursuant to the Bylaws, the Joint Board consists of three members appointed by the Secretary of the Treasury and two appointed by the Secretary of Labor. The Board elects a Chairman from among the Treasury Representatives and a Secretary from among the Department of Labor Representatives. The Pension Benefit Guaranty Corporation may designate a non-voting representative to sit with, and participate in, the discussions of the Board. All decisions of the Board are made by simple majority vote.

§ 900.4 Meetings.

The Joint Board meets on the call of the Chairman at such times as are necessary in order to consider matters requiring action. Minutes are kept of each meeting by the Secretary.

§ 900.5 Staff.

(a) The Executive Director advises and assists the Joint Board directly in carrying out its responsibilities under the Act and performs such other functions as the Board may delegate to him.

(b) Members of the staffs of the Departments of the Treasury and of Labor, by arrangement with the Joint Board, perform such services as may be appropriate in assisting the Board in the discharge of its responsibilities.

§ 900.6 Offices.

The Joint Board does not maintain offices separate from those of the Departments of the Treasury and Labor. Its post office address is Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220.

§ 900.7 Delegations of authority.

As occasion warrants, the Joint Board may delegate functions to the Chairman or the Executive Director, including the authority to receive applications and to give notice of actions. Any such delegation of authority is conferred by resolution of the Board.

DONALD S. GRUBBS, Jr.,
Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc.75-11216 Filed 4-25-75;10:12 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-562]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26186-93). A list of servicing companies is also available from the Federal Insurance Administration, HUD, 451 Seventh Street SW., Washington, D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special hazards that is located within any comunity currently participating in the National Flood Insurance Program.

Until July 1, 1975, the statutory requirement for the purchase of flood insurance does not apply until and unless the community enters the program and the special flood hazards have been identified. However, on July 1, 1975, or one year after the identification of the community as flood prone, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and flood insurance has been purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. Therefore notice and public procedure under 5 U.S.C. 553(b) are impracticable, unnecessary, and contrary to the public interest.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.4 List of eligible communities.

* * * * *

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	State map repository	Local map repository
•	•	•	•	•	•	•
Alabama	Baldwin	Bay Minette, city of	April 23, 1975. Emergency			
Do	Talladega	Childersburg, city of	do	June 14, 1974		
Georgia	Newton	Covington, city of	do			
Alabama	Geneva	Hartford, city of	do	June 28, 1974		
Colorado	Teller	Woodland Park, town of	do	June 7, 1974		
Florida	Osceola	St. Cloud, city of	do	June 28, 1974		
Do	Polk	Winter Haven, city of	do	Aug. 10, 1974		
Do	Seminole	Oviedo, city of	do	Jan. 23, 1974		
Idaho	Kootenai	Rathdrum, city of	do			
Illinois	Grundy	Coal City, village of	do	Mar. 8, 1974		
Do	La Salle	Ottawa, city of	do	Apr. 5, 1974 and Jan. 3, 1975		
Do	Du Page	Westmont, village of	do	May 17, 1974		
Kansas	Cloud	Concordia, city of	do			
Maine	Androscoggin	Livermore Falls, town of	do	Feb. 15, 1974		
New York	Warren	Lake George, village of	do	Apr. 12, 1974		
Do	Oneida	Marcy, town of	do	Sept. 20, 1974		
Ohio	Washington	Macksburg, village of	do	Aug. 23, 1974		
Oregon	Yamhill	Dundee, town of	do	June 28, 1974		
South Dakota	Union	Unincorporated areas	do			
Tennessee	Hawkins	Church Hill, city of	do	May 10, 1974		

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: April 16, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75-11136 Filed 4-29-75;8:45 am]

[Docket No. FI 568]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26136–93). A list of servicing companies is also available from the Federal Insurance Administration, HUD, 451 Seventh Street SW., Washington, D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special hazards that is located within any community currently participating in the National Flood Insurance Program.

Until July 1, 1975, the statutory requirement for the purchase of flood insurance does not apply until and unless the community enters the program and the special flood hazards have been identified. However, on July 1, 1975, or one year after the identification of the community as flood prone, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and flood insurance has been purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. Therefore notice and public procedure under 5 U.S.C. 553(b) are impracticable, unnecessary, and contrary to the public interest.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in the order to designate (1) the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program; (2) the effective date on which the community became ineligible for the sale of flood insurance because of its failure to submit land use and control measures as required pursuant to § 1909.24(a); or (3) the effective date of a community's formal reinstatement in the program pursuant to § 1909.24(b). These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.4 Status of participating communities.

• • • • •

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	State map repository	Local map repository
Indiana	Hancock	Unincorporated areas	Apr. 21, 1975. Emergency			
Do	Grant	Matthews, town of	do	Dec. 28, 1973		
Do	Newton	Unincorporated areas	do	Jan. 3, 1975		
Iowa	Jackson	Bellevue, city of	do	Mar. 29, 1974		
Kansas	Jefferson	Perry, city of	do	Dec. 7, 1973		
Maine	York	South Berwick, town of	do	Aug. 9, 1974		
Minnesota	Dakota	Lilydale, city of	Apr. 9, 1971. Emergency. Feb. 9, 1973. Regular. Jan. 15, 1975. Suspension. Apr. 9, 1975. Reinstated.	Feb. 9, 1973		
Missouri	Cass	Unincorporated areas	Apr. 21, 1975. Emergency			
Do	New Madrid	North Lilbourn, village of	do			
New Jersey	Hudson	East Newark, borough of	do	June 28, 1974		
Do	Bergen	Tenafly, borough of	do	Jan. 16, 1974		
New York	Oneida	Trenton, town of	do	Aug. 30, 1974		
Do	Westchester	Pound Ridge, town of	do	May 24, 1974		
Do	Sullivan	Lumberland, town of	do	Sept. 13, 1974		
North Carolina	Union	Monroe, city of	do	Sept. 20, 1974		
North Dakota	Billings	Medora, city of	do	Nov. 29, 1974		
Ohio	Cuyahoga	Berea, city of	do	Feb. 1, 1974		
Do	do	Brook Park, city of	do	June 7, 1974		
Do	Champaign	Urbana, city of	do	do		
Oklahoma	Mayes	Pryor Creek, city of	do			
Do	Tulsa	Unincorporated areas	do			
Pennsylvania	Potter	Abbott, township of	do	Dec. 20, 1974		
Do	Delaware	Aston, township of	do	Oct. 25, 1974		
Do	Schuylkill	East Union, township of	do	Nov. 15, 1974		
Do	Sullivan	Forksville, borough of	do	Aug. 16, 1974		
Do	Schuylkill	Foster, township of	do	Jan. 31, 1975		
Do	York	Hopewell, township of	do	Dec. 27, 1974		
Do	Butler	Harmony, borough of	do			
Do	Chester	Kennett Square, borough of	do	Dec. 28, 1973		
Do	York	Manheim, township of	do	Dec. 27, 1974		
Do	Schuylkill	Norwegian, township of	do	Jan. 10, 1975		
Do	do	Rush, township of	do	Nov. 22, 1974		
Do	Lawrence	Union, township of	do	Jan. 24, 1975		
South Dakota	Sanborn	Unincorporated areas	do			
Tennessee	Davidson	Goodlettsville, city of	do			
Do	Macon	Red Boiling Springs, city of	do	June 7, 1974		
Texas	Nueces	Bishop, city of	do	Feb. 1, 1974		
Virginia	Lee	Charles, town of	do			
West Virginia	Marion	Monongah, town of	do	May 31, 1974		
Do	Kanawha	Nitro, city of	do	Mar. 15, 1974		

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: April 16, 1975.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.75–11135 Filed 4–29–75;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 357–1]

PART 85—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Certification of New Light Duty Diesel-Powered Trucks Intended for Initial Sale at High Altitude—1977 Model Year

The purpose of these regulations is to establish the certification procedures for light duty diesel-powered trucks offered for sale in high altitude regions in the Nation.

On October 22, 1974 (39 FR 37609), EPA published the final rulemaking concerning the control of emissions from light duty diesel-powered trucks. Specifically deleted from those regulations were the certification procedures for new light duty diesel-powered trucks offered for sale at high altitude. These procedures, although included in the notice of proposed rulemaking published on January 25, 1974 (39 FR 3276) were deleted from the final rulemaking for two reasons. First, the agency was in the process of formulating a consistent set of high altitude regulations for light duty gasoline-fueled vehicles, light duty trucks and light duty diesel-powered vehicles which were not scheduled for completion until after the light duty diesel truck regulations were published. Second, the light duty diesel truck regulations were applicable to the 1976 model year and the certification procedures for high altitude vehicles do not take effect until the 1977 model year.

The January 25, 1974 notice of proposed rulemaking afforded an opportunity for the public to comment on the high altitude certification procedures applicable to light duty diesel-powered trucks. Since comments on those high altitude procedures were received and reviewed, the agency finds no reason for issuing a new notice of proposed rulemaking on this subject.

Several comments on high altitude certification procedures for light duty diesel-powered trucks were received and considered in the formulation of this final rulemaking. The comments and their disposition are as follows:

1. International Harvester Corporation requested that emission data vehicles be selected for high altitude testing only from engine families in which vehicles are sold in significant numbers at high altitude.

The Agency emphasizes that where both applicable and possible, regulations should be consistent for all vehicle types. The same revisions were made to the high altitude certification procedures for light duty diesel-powered trucks that were previously made to regulations applicable to other light duty vehicles. These regulations contain test requirements for high altitude vehicles which cannot be reduced below the technically supportable sound minimums specified. Thus IHC's comment was not incorporated into the final regulations.

2. International Harvester Corporation suggested that since diesel engines operate by direct injection into cylinders, high altitude conditions can be simulated by restricting the inlet air and evacuating the exhaust. IHC requested that such simulation be allowed for mileage accumulation and emission data tests.

The requirement for mileage accumulation at high altitude has been deleted for reasons stated in the preamble of the October 18, 1974 high altitude regulations (39 FR 37299). IHC's request for simulation of altitude conditions for mileage accumulation is therefore no longer necessary.

As to simulation of altitude effects by simple intake throttling and evacuation of exhaust gas, such a procedure provides only an estimate of exhaust emission levels. The regulations therefore make no provisions for simulation techniques other than those that provide for equivalent barometric pressures for emission data testing.

3. Perkins Engines, Inc. commented that their emission control system is extremely sensitive to adjustments of the injection system and therefore high risk is involved should the owner attempt to carry out modifications for altitude operation in accordance with instructions printed in an operator's handbook or manual.

EPA acknowledges Perkins' concern that adjustments of the injection system by vehicle owners may not be performed with the same precision as would be obtained by an expert trained in such adjustments. However, the purpose of a requirement to publish such instructions as are necessary to modify a vehicle so that it meets emission standards, should the vehicle be permanently transferred from one altitude region to another, is to notify the vehicle purchaser of the special maintenance needs and not to require that untrained owners perform such maintenance themselves. The Agency deems it proper to require that such instructions be published, and cannot support deletion of such a requirement solely because the subject maintenance may be difficult to perform.

4. Perkins also requested a deferment of the high altitude provisions based on considerations of cost and time required to develop systems to meet the standards at high altitude.

The January 25, 1974 notice of proposed rulemaking specified that beginning with the 1976 model year, vehicles which are sold at high altitude must be certified for compliance with emissions standards at high altitude. Both the regulations promulgated today and those promulgated on October 18, 1974, specify that the high altitude certification procedures will not begin until the 1977 model year, due to considerations outlined in the preamble to the October 18, 1974 regulations. No further delay in the implementation of the regulations for light duty diesel-powered trucks is deemed necessary or appropriate by the Agency.

The regulations promulgated herein require manufacturers to certify new light duty disel-powered trucks designed for initial sale at high altitudes to comply with emission standards at those altitudes. Trucks which are not so certified may not be legally sold at high altitudes.

These amendments are applicable to light duty diesel-powered trucks beginning with the 1977 model year, are issued under the authority of sections 206 and 301 of the Clean Air Act as amended (42 U.S.C. 1857f–5, 1857g) and are effective May 30, 1975.

Dated: April 24, 1975.

RUSSELL E. TRAIN,
Administrator.

Part 85, Title 40 of the Code of Federal Regulations as applicable to 1977 and later model year light duty diesel-powered trucks, is amended as follows:

1. In § 85.302, paragraph (a) is revised. As amended, the section reads as follows:

§ 85.302 Definitions.

(a) * * *

(24) "High altitude" means any elevation over 1,219 meters (4,000 feet).

(25) "High altitude conditions" means a test altitude of 1,585 meters (5,200 feet), plus or minus 274 meters (900 feet), or equivalent observed barometric test conditions of 83.48 kPa (24.72 inches Hg), plus or minus 2.77 kPa (0.82 inches Hg).

* * * * *

2. In § 85.303, the following abbreviation is added to the list of abbreviations:

§ 85.303 Abbreviations.

* * * * *

kPa—Kilopascal(s).

* * * * *

3. In § 85.377–4, paragraph (b) is added to read as follows:

§ 85.377–4 Required data.

* * * * *

(b) (1) Emission data on such vehicles tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which will show their emissions after zero kilometers (zero miles), and 6,436 kilometers (4,000 miles) of operation.

(2) Emission data on those vehicles selected under § 85.377–5(b) (5) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high altitude conditions after 6,436 kilometers (4,000 miles) of operation at any altitude.

* * * * *

4. In § 85.377–5, paragraphs (b) (5) and (b) (6) are added to read as follows:

§ 85.377–5 Test vehicles.

* * * * *

(b) *Emission data vehicles.* * * *

(5) The Administrator will also select one vehicle for each engine-system combination within an engine family for which vehicles are to be sold to ultimate purchasers at high altitude.

(6) The Administrator may combine testing requirements for any vehicle selected under paragraph (b) (5) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraphs (b) (2), (3), or (4) of this section by requiring a vehicle selected for testing under paragraphs (b) (2), (3), or (4) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance in accordance with § 85.377–4(b) (2).

* * * * *

In § 85.377–6, paragraph (b) is added to read as follows:

§ 85.377–6 Maintenance.

* * * * *

(b) (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the 6,436 kilometer (4,000 mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on emission data vehicles selected under § 85.377–5(b) (5) and permitted to be tested for purposes of § 85.377–4(b) (2) under the provisions of § 85.377–5(b) (6) may be performed in conjunction with emission control system modifications at the 6,436 kilometer (4,000 mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 85.377–38(a) (3) and (4).

(3) Maintenance on those emission data vehicles selected under § 85.377–5 (b) (5) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the original design may be performed in conjunction with the emission control system modifications at the 6,436 kilometer (4,000 mile) test point, and shall be approved in advance by the Administrator.

* * * * *

6. In § 85.377–7, paragraph (a) is added to read as follows:

§ 85.377–7 Mileage accumulation and emission measurements.

* * * * *

(a) (1) Emission data vehicles: Each emission data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(2) The emission data vehicle(s) selected for testing under § 85.377–5(b) (5) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high altitude conditions.

(3) The emission data vehicle(s) selected for testing under § 85.377–5(b) (5) and permitted to be tested for purposes of § 85.377–4(b) (2) under the provisions of § 85.377–5(b) (6) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low and high altitude conditions. For the purposes of this subparagraph, low altitude means any elevation less than 549 meters (1,800 feet).

* * * * *

7. In § 85.377–30 paragraphs (a) and (b) are added to read as follows:

§ 85.377–30 Certification.

(a) (1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 85.306(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) meets the requirements of the Act and this subpart, he will issue a certificate of conformity with respect to such vehicle(s) except in cases covered by paragraph (c) of this section. The certificate will state which vehicles are certified for sale at high altitude.

(a) (2) * * *

(a) (3) A violation of section 203(a) (1) of the Clean Air Act occurs when any manufacturer sells, offers for sale, or delivers for introduction into commerce at high altitude locations any motor vehicle subject to the regulations under the Act which is not covered by a certificate of conformity issued under this subpart, unless such manufacturer has substantial reason to believe that such motor vehicle will not be sold to an ultimate purchaser for use at a high altitude location.

(a) (4) For the purpose of paragraph (a) (3) "high altitude location" means the intended location of registration, licensing, or titling of such motor vehicle by the ultimate purchaser, such location identified by name and altitude.

(a) (5) For the purpose of paragraph (a) (3) determination of "high altitude location" shall rest with the U.S. Geological Survey, as published in that Agency's 1:250,000 scale series of topographic maps for the United States.

(b) (1) * * *

(i) A test vehicle selected under §§ 85.377–5(b) (2) or (4) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system combination to be sold below 1,219 meters (4,000 feet) in elevation.

(ii) A test vehicle selected under §§ 85.377–5(b) (3) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-transmission type-fuel system combination to be sold below 1,219 meters (4,000 feet) in elevation.

(iii) * * *

(iv) A test vehicle selected under § 85.377–5(b) (5) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

* * * * *

8. In § 85.377–35, paragraph (a) is added to read as follows:

§ 85.377–35 Labeling.

(a) * * *

(4) * * *

(iv) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold to the ultimate purchaser, including, but not limited to, low and high idle speeds, initial injection timing, valve lash, and aneroid adjustment, if any, as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation.

(v) * * *

(vi) The altitude at which the vehicle is intended for sale to the public as specified by a certificate of conformity under § 85.377–30(a).

* * * * *

9. In § 85.377–38, paragraph (a) is added to read as follows:

§ 85.377–38 Maintenance instructions.

(a) * * *

(3) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at low altitude, what adjustments or modifications, if any are necessary to allow the vehicle to meet emissions standards at high altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at high altitude.

(4) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at high altitude, what adjustments or modifications, if any, are necessary to allow the vehicle to meet emissions standards at low altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at low altitude.

* * * * *

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[FRL 337–1]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

PART 172—EXPERIMENTAL USE PERMITS

Revocation and Addition

On March 27, 1974, notice was published in the FEDERAL REGISTER (39 FR 11306) proposing regulations to establish a new part 172 of Chapter 1 of Title 40 of the Code of Federal Regulations and revoke § 162.17 pursuant to the authority of section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 983). The intent of this rulemaking is to revise present procedures with respect to the use of pesticides for experimental purposes so as to conform to the provisions of FIFRA, as amended.

Written comments on the proposed regulations were invited and received from interested parties. As a result of these written comments and in an effort to clarify the intent of the regulations, certain changes were made and the revised draft widely distributed for public discussion. An informal public meeting was held on August 27, 1974 at which comments on this revised draft were received; a transcript of the proceedings was made. All of the written comments received pertaining to section 5 are on file with the Agency. The modifications made between the proposed regulations of March 27, 1974, and this final rulemaking are described below.

Subpart A—§ 172.1 Definitions. In the proposed regulations, the term "participant" included any person who supervises the use of an experimental use pesticide at the application site and any person who has given permission for an experimental use pesticide to be used on his property. Several commenters correctly indicated that these two functions will not necessarily be performed by the same person. Accordingly, for purposes of clarification, the new term "cooperator" was developed. It includes within its scope the latter of the above functions, i.e., granting permission for an experimental use pesticide to be used on one's property. It is intended that, as between the cooperator and participant, the participant is to be the one responsible for the day-to-day supervision of testing programs within his particular area.

The phrase "value for pesticide purposes" has been added to clarify § 172.3, which is discussed below.

§ 172.2 General. Several commenters raised questions regarding the restrictions on sale of experimental use pesticides. The comments fell into two categories: (a) Industry suggested that a more permissive sale provision be adopted and (b) certain environmental groups desired that sale be prohibited entirely. Both these alternatives have been rejected; however, several word changes were necessitated by the introduction of the new terms "participant" and "cooperator." As was stated in the preamble to the proposed regulations, the intent of these regulations is to prevent the unmonitored and unregulated introduction of experimental pesticides into the environment. EPA has determined that absolute prohibition on sale could needlessly burden pesticide development. There is no environmental or human health reason why a participant or cooperator in an experimental program should not compensate the developer. Sale itself has not caused problems. Rather, the problem has centered on the imprecise sale limitations of current regulations. To solve this problem without imposing an unnecessary burden on research programs, these regulations will limit sale or distribution only to participants and cooperators in experimental programs and prohibit resale or other retail sale or other distribution. Such a restriction should provide an adequate safeguard to prevent a manufacturer from carrying on a market program with an experimental pesticide. Further, permits are intended to authorize the use of only enough experimental pesticide to gather data to support registration.

§ 172.3 Scope of requirements. Most of the commenters objected to the language of proposed § 172.3(a). The objections fell into two general categories: (1)

That the language of the proposed section was so restrictive that experimental work would be stifled and (2) that certain users and independent researchers would be precluded from conducting preliminary testing to determine value for pesticide purposes.

These objections were the result of misunderstandings as to the purpose of proposed § 172.3(a). This section was not intended to limit the issuance of experimental use permits to certain persons or to create exceptions to experimental use permit requirements. Rather, this section defines the scope of the requirement for an experimental use permit within the meaning of "pesticide" as defined in the Act. The scope of the requirement for an experimental use permit, set forth in these regulations, is not different from the requirements of the regulation at 40 CFR 162.17(a) promulgated under the 1947 FIFRA.

The development of an effective pesticide, culminating in registration, is a multi-stage process. The statutory scheme of FIFRA, as amended, recognizes this. Initial testing of a substance is for the purpose of determining its value for pesticidal purposes or its toxicity or other properties. This testing, among agricultural researchers, for example, would include laboratory screening for pesticidal activity, laboratory and greenhouse screening for spectra of activity, and limited outdoor testing to determine pesticidal activity under environmental use conditions. When the researcher desires to do large plot testing to accumulate information necessary to register a pesticide under section 3, the Act requires that an experimental use permit be secured. At this stage, the researcher will have determined that the substance has value for pesticidal purposes and will reasonably expect to receive benefit in pest control from its use. The substance, therefore, falls within the statutory definition of "pesticide," section 2(a) of FIFRA, as amended, and, accordingly, the provisions of section 5 are applicable.

In order to clarify this progression of events, Section 172.3(a) has been rewritten. Where a substance or mixture of substances is being tested for the sole purpose of determining whether or not it has pesticidal value for some intended use, and the user does not intend to derive pest control or other economic benefit from the testing, this substance would not come within the definition of pesticide and would therefore not be subject to the Act. It is the reasonable purpose and expectation of the user, as indicated by his actions, that is determinative. In order to make this determination more predictable, the Agency has established several categories of research test use, which will be presumed to be for the purpose of establishing the pesticidal value of the substance. If a research test use falls outside the established categories, then it will be presumed that the sole purpose of the test is not to determine pesticidal value and an experimental use permit will normally be required.

The Agency recognizes that not all situations can be covered in the presumptions. Provision is made, at § 172.3(b), for persons to request an Agency determination of whether testing may be conducted without a permit if they are uncertain as to whether a permit is required. Furthermore, the Agency will give consideration to the amendment of these regulations to add more examples of tests presumed to be for the purposes outlined in § 172.3(a), upon receipt of information indicating a need for such an amendment.

Questions have been raised as to the applicability of this section to registered pesticides. It is the Agency view that use of a registered pesticide in a test being conducted for a purpose not set forth on the label and where the purpose of the test is within the meaning of the first sentence of § 172.3(a), is not a pesticidal use within the meaning of the Act. Therefore, for this limited purpose and for such purposes only, the product would not be considered a pesticide and an experimental use permit would not be required.

§ 172.4 *Applications.* (a) *Time for submission.* The proposed regulations indicated that the Agency would require at least 90 days to process applications for experimental use permits. Several commenters indicated that a 30 or 60 day limit would be more appropriate. The Agency recognizes the importance of processing applications in a timely manner and has established special procedures for the review of applications. Because of the heavy workload in implementing the new law, the Agency cannot guarantee that applications will be acted upon in any specified period of time. In any event, applications will be processed as expeditiously as possible.

(b) *Contents of applications.* Several commenters indicated that the proposed regulations would have effectively precluded anyone from obtaining a permit other than the manufacturer or producer of the product. This was not the intent of the Agency. Therefore, this section has been reorganized to make a distinction between registered and non-registered products. The purpose of this change is to provide for and even encourage experimental testing by third parties, particularly on the minor or specialty use area.

Each application for an experimental use permit will be required to submit the information or data outlined in § 172.4 (b) (1) and, where appropriate, § 172.4 (b) (2). An applicant for a permit to test an unregistered pesticide will, in addition, be required to comply with § 172.4 (b) (3).

The purpose of this section is to require the applicant to submit sufficient data so that the Agency can effectively evaluate the proposed use of an experimental pesticide. The same criteria will be applicable regardless of whether the pesticide is a chemical or biological agent.

§ 172.5 *The permit.* A new subsection (e) has been added to this part. It provides a cross reference to the Section 8 regulations at 40 CFR 169 pertaining to records required to be kept by producers of pesticides.

§ 172.6 *Labeling.* As with § 172.4, several commenters indicated that the proposed regulations on labeling of experimental use pesticides would have effectively precluded issuance of permits to persons other than the manufacturer of a product. Therefore, this section, too, has been reorganized to make a distinction between labeling necessary for experimental use of a registered and non-registered product. Subsection (a) lists specifically all the information normally required on the label of an experimental use pesticide. The new subsection (b) gives the Administrator discretion to approve on a case-by-case basis the supplemental labeling necessary for experimental use of a product already registered for another use.

§ 172.7 *Importation of technical material.* This section is a new provision designed to make clear that technical chemicals being imported for experimental purposes do not need to be registered if an experimental use permit has been requested. The applicant assumes all responsibility for storage and disposition of the materials should the Agency deny the permit request, including, if necessary, disposal in a manner protective of public health and the environment.

§ 172.8 *Program surveillance and report of data.* Several commenters indicated that filing the immediate shipment reports required by the proposed regulations would be excessively burdensome. It is not the shipment data, per se, that the Agency was interested in but, rather, the time and location of the pesticide application. Accordingly, this provision has been deleted. All the information, including the shipment data, will now be required in the quarterly report. The quarterly reports shall indicate only what has transpired during the reporting period. Duplicative filing is not necessary. If no progress has been made during a period, the permittee must indicate this in his quarterly report.

EPA has the responsibility to monitor experimental programs to detect any unforeseen effects or failure by program participants to adhere to permit conditions. Consequently, a new § 172.8(e), has been added to assure that EPA has notification of proposed application dates, times, and locations so as to be able to monitor use as deemed necessary in particular cases.

Several commenters maintained that 90 days would not be sufficient time within which to prepare a final report. In response, the Agency has extended the time allowed to 180 days and provided that the data obtained under an experimental use permit may be submitted as a portion of an application for registration. It is hoped that these changes will facilitate the registration process and ensure complete reporting of the results of the programs conducted under experimental use permits without requiring duplicate submission.

The inspection provision at § 172.4(b)(5)(ii) of the proposed regulations has been transposed to paragraph (f) of this section. There is no change in substance from the proposed version. Several commenters suggested that EPA officials give notice before inspection. While it is contemplated that notice will normally be given before inspection, the Agency reserves the right to inspect without notice if circumstances warrant. The regulations provide that all inspection will be conducted at reasonable times.

§ 172.9 Renewal. There has been no change in this section. A commenter suggested that the Agency limit the number of renewals that would be granted to two so as to prevent indefinite renewals as a substitute for full registration. This suggestion has been rejected. The number of prior permits is not relevant to the grant or denial of an experimental use permit. A permit will be renewed provided the program still falls within the scope of bona fide experimental research and meets the requirements of these regulations. Indefinite renewals as a substitute for full registration will, of course, not be permitted.

§ 172.10 Refusals to issue and revocation. In response to several commenters the time within which to contest the refusal to issue or revocation of an experimental use permit has been extended from ten days after notification of such refusal or revocation to twenty days after receipt of such notification.

The language of section (a) and (b) has been modified to reflect more exactly the language of section 5(e) of the Act.

§ 172.11 Publication. The proposed regulations provided that the Administrator could in his discretion publish notice of the receipt of an application for an experimental use permit and would be required to publish notice of the issuance of such a permit. There was extensive comment on this provision. Generally, it fell into two categories: (1) That notice of the receipt of an application for an experimental use permit should be mandatory and not merely discretionary and (2) that the entire section should be deleted because of concern that publication of receipt of an application for an experimental use permit or of issuance of an experimental use permit would adversely affect research through possible loss of competitive advantage. These final regulations retain the provision for mandatory notice of issuance of an experimental use permit and discretionary notice of receipt of an application for an experimental use permit with opportunity for comment by interested persons. Language to clarify the contents of these notices has been included. In addition, language has been added to explicitly state in the regulations, that the Administrator may also within his discretion, issue notice of intent to call a public hearing prior to issuance of the experimental use permit.

There is neither a legal requirement nor a legal prohibition of FEDERAL REGISTER notice on experimental use permits. Notice of the issuance of an experimental use permit assures that the public will be informed of what experimental pesticides are actually being used. Notice, within the discretion of the Administrator, of the receipt of an application for an experimental use permit, with opportunity for public comment and/or a public hearing, authorizes the Administrator to solicit comment prior to acting on an application for experimental use of a pesticide when he determines that the application is of significant public interest. Unless the application is of such significance, industry's research plans will not be made known to their competitors until the experimental use permit has been granted. This scheme is in accord with the general EPA policy of disclosure.

Subpart B—State Issuance of Permits. This part of the regulations is, of necessity, intertwined with regulations pursuant to Section 24(c). Among other things, the scope of a State experimental permit program will be determined by the definition of "special local needs." Specific regulations covering the state issuance of permits will be issued for comment at the time the Section 24(c) regulations are proposed.

Effective date. Pursuant to section 4(d) of the Administrative Procedures Act, 5 U.S.C. Sec. 553(d), the effective date of a regulation must be at least 30 days after its publication, unless the Agency finds "good cause" for specifying an earlier date. The Agency finds that in this case there is good cause for providing that these regulations are effective immediately upon publication. Any delay in the effectiveness of the regulations may interfere with the orderly research efforts of pesticide development by creating confusion as to the Agency's current requirements for experimental permits under the amended FIFRA. In addition, the Act requires that the regulations were to have been promulgated by October 21, 1973. Any further delay in the promulgation of the regulations would needlessly frustrate this Congressional mandate. Finally, the Agency notes that the final regulations do not differ substantially or materially from the proposed regulations, which were published more than thirty days prior to the publication of the final regulations. The changes which have been made in these regulations were explained to all interested parties at a public meeting held in Washington, D.C. on August 27, 1974. The Agency therefore declares that these regulations are effective upon publication with the following exceptions:

1. Temporary permits issued pursuant to 40 CFR 162.17 will remain in effect until their expiration date subject to §§ 172.2, 172.5, 172.7, 172.8, 172.9 and 172.10. Applications for renewal of temporary permits issued pursuant to 40 CFR 162.17 received after the date of publication of these regulations will be granted if the requirements of § 172.9 are met.

2. Applications for temporary permits or renewals pending on the date of publication of these regulations will continue to be processed under 40 CFR 162.17.

3. Experimental testing of a pesticide currently being conducted by Federal and State agencies will be allowed to continue for the period necessary to complete such testing, such as remainder of the growing season, but in no event shall such testing be conducted wihout an experimental use permit after December 31, 1975. Federal and state agencies planning to initiate new testing must meet the requirements of these regulations.

4. Permit applications received after the date of publication of these regulations will be processed in accordance with the new requirements herein. To the extent that additional information is needed with respect to any such application, the applicant will be promptly notified. EPA will attempt to minimize the delays involved in this transition from the existing to the new regulations.

RUSSELL E. TRAIN,
Administrator.

Dated: April 24, 1975.

§ 162.17 [Revoked]

1. Title 40 of the Code of Federal Regulations is hereby amended by revoking § 162.17.

2. A new Part 172 is added as follows:

Subpart A

Sec.
172.1 Definitions.
172.2 General.
172.3 Scope of requirement.
172.4 Applications.
172.5 The permit.
172.6 Labeling.
172.7 Importation of technical material.
172.8 Program surveillance and reporting of data.
172.9 Renewals.
172.10 Refusals to issue and revocation.
172.11 Publication.

Subpart B—State Issuance of Experimental Permits [Reserved]

AUTHORITY: Sections 5, 24 and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 983, 997).

Subpart A

§ 172.1 Definitions.

For the purposes of this Part, the following terms shall be defined as listed below:

(a) The term "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973), and other legislation supplementary thereto and amendatory thereof.

(b) The term "applicant" means any person who applies for an experimental use permit, pursuant to section 5 of the Act.

(c) The term "cooperator" means any person who grants permission to a permittee or a permittee's designated participant for the use of an experimental use pesticide at an application site owned or controlled by the cooperator.

(d) The term "experimental animals" means individual animals or groups of animals, regardless of species, intended for use and used solely for research purposes and does not include animals intended to be used for any food purposes.

(e) The term "participant" means any person acting as a representative of the permittee and responsible for making available for use, or supervising the use or evaluation of, an experimental use pesticide to be applied at a specific application site.

(f) The phrase "value for pesticide purposes" means that characteristic of a substance or mixture of substances which produces an efficacious action on a pest.

(g) The term "permittee" means any applicant to whom an experimental use permit has been granted.

Terms defined in the Act and not explicitly defined herein are used herein with the meaning given in the Act.

§ 172.2 General.

(a) Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983), and except as herein provided by § 172.3, any person wishing to accumulate information necessary to register under section 3 of the Act and the regulations thereunder (1) a pesticide not registered with this Agency or (2) a registered pesticide for a use not previously approved in the registration of the pesticide may apply to the Administrator at any time for an experimental use permit.

(b) Pesticides under experimental use permits may not be sold or distributed other than through participants and, if sold or distributed through participants, may be used only at an application site of a cooperator and in accordance with the terms and conditions of the experimental use permit.

§ 172.3 Scope of requirement.

(a) A substance or mixture of substances being put through laboratory or greenhouse tests, or limited replicated field trials to confirm such tests, or other tests, in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties, and from which the producer, applicator or any other person conducting the test does not expect to receive any benefit in pest control from its use, is not considered a pesticide within the meaning of the Act and no experimental use permit will be required. This purpose will be presumed for the following types of tests.

(1) *Land use.* Tests conducted on a cumulative total of not more than 10 acres involving use of a particular substance or mixture of substances against a particular pest, provided that any food or feed crops involved in, or affected by, such tests (including but not limited to, crops subsequently grown on such land which may reasonably be expected to contain residues of such substance or mixture) shall be destroyed or consumed only by experimental animals unless a tolerance or exemption from tolerance has been established.

(2) *Aquatic use.* Tests conducted on a total of not more than one surface-acre of water involving use of a particular substance or mixture of substances against a particular pest, provided that (i) waters which are involved in, or which are affected by, such tests will not be used for irrigation purposes, drinking water supplies or body contact recreational activities and (ii) that no such tests may be conducted in any waters which contain, or which affect, any fish, shellfish or other plants or animals taken for recreation or commercial purposes and used for food or feed unless a tolerance or exemption from tolerance has been established.

(3) *Animal treatments.* Tests conducted only on experimental animals. No animals may be tested if they may be used in food or feed unless a tolerance or exemption from tolerance has been established.

(b) The above examples are not meant to be all inclusive nor to preclude testing in larger areas or larger numbers of units if the intended use falls within the meaning of § 172.3(a). Tests which do not come within the above examples will not be presumed to fall within the meaning of § 172.3(a) and the presumption will be that the test requires an experimental use permit. The Registration Guidelines specify, by way of further example, testing which requires an experimental use permit. The Agency will give consideration to the amendment of these regulations to add more examples of tests presumed to be for the purposes outlined in § 172.3(a) upon receipt of information indicating a need for such an amendment. Persons intending to conduct tests who are uncertain as to whether the testing may be conducted without a permit may submit a request for determination to the Registration Division. Such a request shall include the information listed in § 172.4(b)(1)(ii) and (iii) and in the case of an unregistered product, the information in § 172.4(b)(3)(i).

(c) Use of a registered pesticide in a test being conducted to determine its pesticidal value for a use not set forth on the label and where the requirements of § 172.3(a) above are met shall not require an experimental use permit.

(d) No experimental use permit is required for a substance or mixture of substances being put through tests for the sole purpose of gathering data required for approval of such substance or mixture under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) as:

(1) A "new drug" (21 U.S.C. sec. 321(p) and sec. 355),

(2) A "new animal drug" (21 U.S.C. sec. 321(w) and sec. 360(b) or

(3) An "animal feed" (21 U.S.C. sec. 321(x)) containing a "new animal drug" (21 U.S.C. sec. 360(b).

Paragraph (d) of this section shall not apply when a purpose of such test is to accumulate information necessary to register a pesticide under section 3 of the Act.

§ 172.4 Applications.

(a) *Time for submission.* An application or request for amendment to an existing permit shall be submitted in triplicate to the Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Washington, D.C. 20460, as far as possible in advance of the intended date of shipment or use. Applications will be processed as expeditiously as possible.

(b) *Contents of applications.* (1) *General requirements.*

(i) The name and address of the applicant;

(ii) The registration number of the product, if registered;

(iii) The purpose or objectives of the proposed testing; a description in detail of the proposed testing program including test parameters; a designation of the pest organism(s) involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rates, and situation of application on or in which the pesticide is to be used; the States in which the proposed program will be conducted; the number of acres, number of structural sites, or number of animals by State to be treated or included in the area of experimental use; the proposed dates or period(s) during which the testing program is to be conducted; and the manner in which supervision of the program will be accomplished;

(iv) The name, street address, telephone number, and qualifications of all participants in the program (whether or not in the employ of the applicant). A permit must be amended to add or change participants;

(v) The name and street address of all cooperators, if available at the time an application is submitted or as soon thereafter as available;

(vi) A description and the specific results of any appropriate prior testing of the product conducted by the applicant to determine toxicity and effects in or on target organisms at the site of application; and to determine phytotoxicity and other forms of toxicity or effects on nontarget plants, animals, and insects at or near the site of application; and to determine adverse effects on the environment;

(vii) The proposed method of storage and disposition of any unused experimental use pesticide and its containers; and

(viii) Such other additional pertinent information as the Administrator may require.

(2) *Requirement for tolerance.* If the experimental use pesticide is to be used in such a manner that any residue can reasonably be expected to result in or on food or feed, the applicant must:

(i) Submit evidence that a tolerance or exemption from the requirement of a tolerance has been established for residues of the pesticide in or on such food or feed under Section 408 of the Federal Food, Drug, and Cosmetic Act, or a regulation promulgated under Section 409 of that Act; or

(ii) Submit a petition proposing establishment of a tolerance or an exemption from the requirement of a tolerance under section 408, or a regulation under Section 409, of the Federal Food, Drug, and Cosmetic Act; or

(iii) Certify that the food or feed derived from the experimental program will be destroyed or fed only to experimental animals for testing purposes, or otherwise disposed of in a manner which will not endanger man or the environment. The method of such destruction or disposition shall be provided in the application for the permit.

(3) *Additional requirements for unregistered pesticide products.* (i) A complete confidential statement of composition for the formulation to be tested giving the name and percentage by weight of each ingredient, active and inert;

(ii) Chemical and physical properties of each active ingredient of the formulation to be tested, including, but not limited to, the manufacturing or laboratory processes and analytical methods suitable for determining the active ingredients in the formulation;

(iii) Appropriate date, if available, on the rate of decline of residues on the treated crop or environmental site or other information for determination regarding entry of persons into treated areas; and

(iv) Results of toxicity tests and other data relevant to the product's potential for causing injury to the users or other persons who may be exposed, including any available epidemiological information as to man.

§ 172.5 The permit.

(a) *Issuance.* The Experimental Use Permit shall be issued when the Administrator determines that the conditions of Section 5 of the Act, and the regulations thereunder, have been met subject to such terms and conditions as the Administrator determines are warranted.

(b) *Duration.* Permits will be effective for a specified period of time, normally one year, depending upon the crop or site to be tested and the requirements of the testing program submitted. The applicant should propose a suitable duration of the permit commensurate with the program submitted. Permits and associated temporary tolerances may be renewed, extended, or amended upon request if circumstances warrant.

(c) *Limitations.* The quantity of a pesticide allowed by a permit may be less than requested if it is determined that the available information on efficacy, toxicity or other hazards, the need for data, or the adequacy of program supervision does not justify the quantity of the pesticide requested. Other limitations may also be placed in the permit if necessary for the protection of the public health and the environment.

(d) *Additions.* With respect to an experimental use pesticide containing any chemical or combination of chemicals not included in any previously registered pesticides, the Administrator may require that additional studies be conducted during the permit period to gather data to support the establishment of tolerances and/or registration. To the extent practicable, the applicant will be notified of any such requirements before or at the time an experimental use permit is issued.

(e) *Maintenance of records.* All producers of pesticides produced pursuant to an experimental use permit shall maintain records in accordance with Part 169.

§ 172.6 Labeling.

(a) *Contents.* Except as provided by (b) below, all pesticides shipped or used under an experimental use permit shall be labeled with directions and conditions for use which shall include the following:

(1) The prominent statement, "For Experimental Use Only";

(2) The Experimental Use Permit number;

(3) The statement, "Not for sale to any person other than a participant or cooperator of the EPA-approved Experimental Use Program";

(4) The name, brand, or trademark;

(5) The name and address of the permittee, producer, or registrant;

(6) The net contents;

(7) An ingredient statement;

(8) Warning or caution statements;

(9) Any appropriate limitations on entry of persons into treated areas;

(10) The establishment registration number, except in those cases where application of the pesticide is made solely by the producer; and

(11) The directions for use, except that the Administrator may approve the use of the experimental program as labeling provided that such program is to be distributed with the product.

(b) *Supplemental labeling.* In the case of a registered pesticide, the Administrator may, at his discretion, permit a pesticide to be used under an experimental use permit with supplemental labeling as approved by him.

§ 172.7 Importation of technical material.

Technical materials may be imported without registration in sufficient quantities to formulate a pesticide for which an Experimental Use Permit has been requested if the application for such permit states that such importation will occur.

§ 172.8 Program surveillance and reporting of data.

(a) The permittee shall supervise the test program and evaluate the results of testing at each site of application. It will further be the responsibility of the permittee to report immediately to the Administrator, or to any person designated by him, any adverse effects from use of, or exposure to, the pesticide.

(b) The permittee shall submit the following reports to the Registration Division during the experimental program.

(1) Unless otherwise directed, reports shall be submitted every three months from the date of the permit and shall include the following:

(i) Name and street address of the shipper of any pesticide covered by the permit and place or places from which shipped;

(ii) Name and street address of consignee;

(iii) Amount of each shipment;

(iv) Total quantities of the pesticide shipped and used during the reporting period;

(v) Total quantities of technical material imported to formulate pesticides covered by the permit;

(vi) List of States into which shipments were made; and

(vii) Summaries of the progress made and data obtained during the report period.

(2) A final report shall be submitted within 180 days after the expiration of the permit, unless a request for extension of time is approved, and shall include:

(i) All data gathered during the testing program; field notes need not be submitted but must be maintained and submitted upon request;

(ii) A description of the disposition of any pesticide containers and any unused pesticides including amounts disposed of and the method and site of disposition; and

(iii) The method of disposition of affected food and/or feed.

The data under paragraph (b)(2)(i) of this section above may be submitted as part of an application for registration submitted within 180 days after the expiration of the permit, provided that the final report shall include a statement that such application has been made, and the date of such application.

(c) In addition to the reporting requirements provided for elsewhere in this Part, in the case of any meat-producing animals or birds that receive a direct treatment or application of any experimental use pesticide, the name and location of the packing plant where the animals will be processed shall be sent to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Washington, D.C. 20250, at least 10 days before the animals are to be shipped for slaughter. This requirement may be waived, on request, by the USDA. These provisions do not exempt treated food-producing animals and their products from compliance with other applicable inspection requirements.

(d) Failure to submit required reports may constitute grounds for revocation of the permit.

(e) For the purpose of supervising the use of experimental use pesticides, the Agency may require the permittee or any participant to give reasonable advance notification of the intended dates, times, and sites on which such experimental use pesticide will be applied.

(f) The permittee or participants in the experimental use program will permit any authorized representative of the Agency, upon presentation of official identification, entry, at any reasonable time, to any premises involved in the

testing program to inspect and to determine whether there has been compliance with the terms and conditions of the permit.

§ 172.9 Renewals.

Applications for renewal of experimental use permits and temporary tolerances, to provide for additional testing, shall be submitted prior to expiration of the permit. Requirements for renewals are the same as for applications under § 172.4, except that information previously submitted may be incorporated by reference.

§ 172.10 Refusals to issue and revocation.

(a) *Refusal.* At any time that the Administrator determines that an experimental use permit is not justified, or that the issuance of such a permit would cause unreasonable adverse effects on the environment, or that for any other reason provided for under the law a permit shall not be issued, he shall notify the applicant in writing.

(b) *Revocation.* The Administrator may revoke an experimental use permit if he finds that its terms or conditions are being violated or that its terms or conditions are inadequate to avoid unreasonable adverse effects on the environment, or if new evidence is obtained which demonstrates that the tolerance will be inadequate to protect the public health, or for failure to meet any other provision of Part 172. The Administrator will notify the permittee in writing of such revocation. The permittee shall notify all participants of such revocation as soon as possible after he receives notice of revocation. The revocation of a permit shall not preclude the Administrator from initiating civil or criminal sanctions for the violations of the permit conditions or otherwise as authorized by law.

(c) *Hearing.* In the event that an applicant for an experimental use permit wishes to contest the refusal to issue an experimental use permit, or an experimental use permittee wishes to contest the revocation of any such permit, he shall, within twenty days after receipt of notice of such refusal or revocation, file with the Administrator a written request for an opportunity to confer with the Administrator or his designee. Within twenty days after such conference, the applicant or permittee will be notified of the Administrator's final decision.

§ 172.11 Publication.

(a) *Notice of receipt of an experimental use permit application.* The Administrator shall publish notice in the FEDERAL REGISTER of receipt of an application for an experimental use permit upon finding that issuance of the experimental use permit may be of regional or national significance. This notice shall include:

(1) The active ingredients,
(2) Use pattern(s),
(3) Quantity of pesticide,
(4) Total acreage,
(5) Location of area of application,
(6) A statement soliciting comments from any interested persons regarding the application.

(b) *Public hearing.* The Administrator may hold a public hearing, and publish notice in the FEDERAL REGISTER of the date and location of the hearing, when he determines that there is sufficient interest in the application to warrant a hearing, based upon the comments received in response to the Notice of Receipt of an Application, or that a hearing would otherwise be in the public interest.

(c) *Issuance of experimental use permit.* The Administrator shall give prompt notice in the FEDERAL REGISTER of the issuance of an experimental use permit. The notice shall include:

(1) The active ingredients,
(2) Use pattern(s),
(3) Quantity of pesticide,
(4) Total acreage,
(5) Location of area of application,
(6) A statement indicating where the experimental use permit is available for public inspection.

Subpart V—State Issuance of Experimental Permits [Reserved]

[FR Doc. 75-11314 Filed 4-29-75;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amendment 146]

PART 1-1—GENERAL

Procurement of Items Using Jewel Bearings

This amendment of the Federal Procurement Regulations amends § 1-1.319 to prescribe procedures for use in ordering jewel bearings and related items from the William Langer Jewel Bearing Plant for use in the performance of requirements and indefinite delivery contracts when such contracts authorize more than one ordering activity to place orders upon the contractor.

Section 1-1.319 is amended by revising paragraph (c)(1)(v). As revised the paragraph reads as follows:

§ 1-1.319 Procurement of items using jewel bearings.

* * * * *

(c) *Policy.* (1) * * *

(v) In the case of requirements contracts (see § 1-3.409(b)) and indefinite quantity contracts (see § 1-3.409(c)) which authorize more than one activity to place orders upon the contractor. It is not practicable for a contractor to place an order with the Plant within 90 calendar days after the effective date of his contract for the entire amount of jewel bearings and related items that will be required for the performance of the contract. Where such contracts are involved, the clause in § 1-1.319(e) may be changed by modifying paragraphs (b) and (c) to provide for procurement, on a quarterly or other periodic basis, of an amount of jewel bearings and related items equal to the amount (by type and size) of jewel bearings and related items actually used by the contractor in the performance of the contract during the period immediately preceding the ordering date. In addition, jewel bearings and related items so obtained shall be placed in the contractor's inventory for use in the performance of current or future Government contracts or for use in commercial production. Contracts which provide for periodic ordering on an actual use basis shall not be subject to the equitable adjustment provisions of paragraph (e) of the clause in § 1-1.319(e). Accordingly, the clause may be further modified to delete paragraph (e).

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective August 4, 1975, but may be observed earlier.

Dated: April 23, 1975.

DWIGHT A. INK,
Acting Administrator of General Services.

[FR Doc.75-11211 Filed 4-29-75;8:45 am]

[FPR Amdt. 145]

COST ACCOUNTING STANDARDS

This amendment of the Federal Procurement Regulations implements revised Cost Accounting Standards Board (CASB) rules and regulations (39 FR 44389, December 24, 1974) regarding an exemption from CASB requirements for certain contracts and subcontracts of $500,000 or less. The amendment (1) adds the additional exemption, (2) authorizes retroactive application under certain circumstances, and (3) adds an additional solicitation notice containing an appropriate Certificate of Exemption. The exemption is applicable to both negotiated national defense and negotiated nondefense contracts. The Cost Accounting Standards clause is amended to provide the same exemption for subcontracts. References to the above actions are made in Parts 1-4, 1-7, and 1-15. Under this new exemption authority:

(a) Contractors whose CAS covered contract(s) or subcontract(s) individually do not exceed $500,000 as of January 1, 1975, are exempt for new contract(s) or subcontract(s) of $500,000 or less;

(b) Contractors with existing CAS covered contract(s) or subcontract(s) individually in excess of $500,000 as of January 1, 1975, are not exempt for new contract(s) or subcontract(s) of $500,000 or less, unless the new contract or subcontract is awarded after receipt of notification of final acceptance of all items or work under existing contract(s) or subcontract(s) in excess of $500,000;

(c) A contractor may elect to accept the CAS clause when awarded the first contract or subcontract after January 1, 1975, of $500,000 or less which otherwise would be exempt under the criteria;

if he does so, he will continue to be subject to the clause for all new contracts and subcontracts in excess of $100,000 until such time as he has received notification of final acceptance of all items or work on any contracts or subcontracts containing the CAS clause;

(d) However, a contractor who does not elect to accept the CAS clause for those contracts of $500,000 or less exempt under the optional criteria (c. above) cannot thereafter make such an election to accept the CAS clause for new awards of $500,000 or less until such time as he is no longer performing any work for which he has previously accepted the new exemption, i.e., until he has received notice of final acceptance of all items or work under his exempted contracts or subcontracts.

PART 1–3—PROCUREMENT BY NEGOTIATION

1. The table of contents for Part 1–3 is amended to change the entry for § 1–3.1203 to read, as follows:

Sec.
1–3.1203 Applicability of cost accounting standards and prime contractor disclosure statement(s).

2. Section 1–3.1203 is amended to change the caption of the section, to add a new paragraph (a)(1)(vi), and add a new paragraph (h), as follows:

§ 1–3.1203 Applicability of cost accounting standards and prime contractor disclosure statement(s).

(a) * * *
(1) * * *

(vi) In addition, paragraph (h) of this section sets forth conditions under which contracts of $500,000 or less can be exempted and requires an additional notice to be inserted in solicitations.

* * * * *

(h) *Exemption for contracts of $500,000 or less and additional notice for solicitations.* (1) In addition to the exemptions in paragraphs (a)(1) and (a)(2) of this § 1–3.1203, the requirements of this section shall not be applicable to any contract or subcontract of $500,000 or less, unless it is awarded to a contractor, who, on the date of such award, (i) has already received a contract or subcontract in excess of $500,000 and (ii) has not received notification of final acceptance of all items of work to be delivered on that contract or subcontract and on all other contracts or subcontracts awarded after January 1, 1975, which were subject to the Cost Accounting Standards clause. For this purpose, an intracorporate transfer shall be considered to be a subcontract. Notwithstanding this exemption, any contractor entitled to an exemption under this provision may elect to comply with the Cost Accounting Standards clause prescribed by § 1–3.1204. The contractor may elect to comply in connection with the receipt of its first contract or subcontract awarded after January 1, 1975, which but for this provision would be subject to the clause. A contractor who does not elect to comply with the clause in connection with the receipt of the first contract or subcontract, may thereafter make such an election only if it receives a contract or subcontract of the type described, at a time when it has no other contract or subcontract of that type on which notification of final acceptance of all items or work to be delivered has not been received. Retroactive exemption of existing contracts entered into prior to January 1, 1975, where the circumstances are such that these existing contracts would have been exempt if awarded after that date is authorized, provided the contracting officer determines that the Government receives adequate consideration for deletion of the Cost Accounting Standards clause from the contract(s). In the event a contractor was awarded a prime contract containing the Cost Accounting Standards clause prior to January 1, 1975, and must award a subcontract of $500,000 or less subsequent to January 1, 1975, such subcontract may be exempted in accordance with this paragraph (h) provided the contractor obtains from the subcontractor the substance of the Certificate of Exemption established in this paragraph (h)(2).

(2) *Additional notice for solicitations.* In addition to the notice for solicitations entitled "Disclosure Statement—Cost Accounting Practices and Certification," the following notice will be inserted in all solicitations that contain that notice as required by paragraph (a)(3) of this section:

COST ACCOUNTING STANDARDS—EXEMPTION FOR CONTRACTS OF $500,000 OR LESS—CERTIFICATION

If this proposal is expected to result in the award of a contract of $500,000 or less and the offeror is otherwise eligible for an exemption, he shall indicate by checking the box below that the exemption to the Cost Accounting Standards clause (FPR § 1–3.1204) under the provisions of 4 CFR 331.30(b)(8) (see FPR § 1–3.1203(h)) is claimed. Where the offeror fails to check the box, he shall be given the opportunity to make an election in writing to the Contracting Officer prior to award. Failure to check the box below or make such an election shall mean that the offeror cannot claim the exemption to the Cost Accounting Standards clause or that the offeror elects to comply with such clause.

[ ] Certificate of Exemption for Contracts of $500,000 or Less.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all items or work on (i) any prime contract or subcontract in excess of $500,000 which contains the Cost Accounting Standards clause, and (ii) any prime contract or subcontract of $500,000 or less awarded after January 1, 1975, which contains the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the contracting officer in writing in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards Clause subsequent to the date of this certificate but prior to the date of any award resulting from this proposal.

3. Section 1–3.1204 is amended to revise introductory material and paragraph (d)(2) of the clause as follows:

§ 1–3.1204 Contract clause.

Insert the following clause in all negotiated contracts exceeding $100,000 unless the procurement is exempted under § 1–3.1203(a)(1), (a)(2), or (h)(1):

COST ACCOUNTING STANDARDS

* * * * *

(d) * * *

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of § 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)) or § 1–3.1203(a)(2) of Title 41, Code of Federal Regulations (41 CFR 1–3.1203(a)(2)).

However, * * *

* * * * *

PART 1–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. Subsection 1–4.410–5 is amended to revise paragraph (d) as follows:

§ 1–4.410–5 Uniform clauses for utility service contracts.

* * * * *

(d) *Cost accounting standards.* Where applicable, insert the two notices for solicitations as set forth in § 1–3.1203(a)(3) and (h)(2) in negotiated solicitations under the conditions contained in Subpart 1–3.12. Where applicable, incorporate the contract clause set forth in § 1–3.1204 in negotiated contracts under the conditions contained in Subpart 1–3.12. Note that as provided in § 1–3.1203, the notice and clause shall not be used when the price is set by law or regulation.

PART 1–7—CONTRACT CLAUSES

5. Section 1–7.103–27 is amended to revise paragraph (a) as follows:

§ 1–7.103–27 Cost Accounting Standards.

(a) Insert the two notices for solicitations as set forth in § 1–3.1203(a)(3) and (h)(2) in negotiated solicitations under the conditions contained in Subpart 1–3.12.

* * * * *

6. Section 1–7.203–23 is amended to revise paragraph (a) as follows:

§ 1–7.203–23 Cost Accounting Standards.

(a) Insert the two notices for solicitations as set forth in § 1–3.1203(a)(3) and (h)(2) in negotiated solicitations under the conditions contained in Subpart 1–3.12.

* * * * *

7. Section 1–7.602–16 is amended to revise paragraph (a) as follows:

§ 1–7.602–16 Cost Accounting Standards.

(a) Insert the two notices for solicitations as set forth in § 1–3.1203(a)(3) and (h)(2) in negotiated solicitations under the conditions contained in Subpart 1–3.12.

* * * * *

8. Section 1–7.702 is amended to revise paragraph (c) (3) as follows:

§ 1–7.702 Solicitation instructions and conditions for transportation contracts.

* * * * *

(c) * * *

(3) *Cost accounting standards.* Insert the two notices for solicitations set forth in § 1–3.1203(a) (3) and (h) (2) in negotiated solicitations under the conditions contained in Subpart 1–3.12.

PART 1–15—CONTRACT COST PRINCIPLES AND PROCEDURES

9. Section 1–15.109 is revised as follows:

§ 1–15.109 Definitions.

As used in this part, except with respect to those contracts exempted under §§ 1–3.1203 (a) (1), (a) (2), or (h) (1), the words and phrases shall have the meanings prescribed by the Cost Accounting Standards Board. For convenience, CASB definitions are set forth in § 1–3.1220.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective January 1, 1975.

Dated: April 11, 1975.

DWIGHT A. INK,
Acting Administrator of General Services.

[FR Doc.75-11210 Filed 4-29-75;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 103—BILINGUAL VOCATIONAL TRAINING

Grant and Contract Awards

Notice of proposed rulemaking was published in the FEDERAL REGISTER on March 4, 1975 at 40 FR 8955, setting forth the proposed regulations governing the award of grants and contracts to eligible applicants in order to develop bilingual vocational training programs under the Vocational Education Act of 1963 (20 U.S.C. 1241 through 1393f) as amended by section 841 of the Education Amendments of 1974, Pub. L. 93–380.

Interested persons were invited to submit written comments, suggestions, or objections regarding these proposed regulations on or before April 3, 1975. One comment was received which asked whether the Commissioner would award the full cost of bilingual vocational training programs or projects.

In accordance with § 103.42, the Commissioner will award grants or contracts for the cost of developing and operating programs "in an amount equal to the total sums expended by the applicant for the purposes set forth in that application." The plain meaning of this provision is that the Commissioner will pay the entire cost of the program or project. No change has been made in § 103.42.

The regulations, therefore, are issued as originally published without change as set forth below.

Pursuant to section 192(b) of the Vocational Education Act, these regulations were submitted to the Secretary of Labor for approval prior to the notice of proposed rulemaking in the FEDERAL REGISTER at 40 FR 8955. Since there are no changes being made to the notice of proposed rulemaking, there is no need to resubmit the final regulations to the Secretary of Labor for approval.

Effective date. The notice of proposed rulemaking was transmitted to Congress on February 24, 1975, pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein has expired without such action having been taken. Therefore, these regulations shall become effective upon April 30, 1975.

(Catalog of Federal Domestic Assistance No. 13.558 Bilingual Vocational Training.)

Dated: April 16, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: April 24, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

1. Section 103.1 is revised to read as follows:

§ 103.1 Applicability.

The regulations to this part apply to grants and contracts made by the U.S. Commissioner of Education for research and training programs under section 131(a) of Part C, for exemplary programs and projects under section 142(c) of Part D, for curriculum development programs under section 189 of Part I, and for bilingual vocational training under section 191 of Part J of the Vocational Education Act of 1963, as amended.

2. Two new definitions are added to § 103.3 to read as follows:

§ 103.3 Definitions.

* * * * *

"Bilingual vocational training" means training or retraining which is conducted as part of a program designed to prepare individuals of limited English-speaking ability for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which the Commissioner determines, and specifies, by regulation, to be generally considered professional which requires a baccalaureate or higher degree; bilingual vocational training includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a bilingual vocational training program; travel of students and vocational training personnel while engaged in a bilingual vocational training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land.

(20 U.S.C. 1248(14))

* * * * *

"Postsecondary educational institution" means a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated or left elementary or secondary school.

(20 U.S.C. 1248(15))

* * * * *

3. A new Subpart E is added to read as follows:

Subpart E—Bilingual Vocational Training

Sec.

103.41 Purpose.
103.42 Eligible programs and projects.
103.43 Eligible applicants.
103.44 Applications for grants or contracts.
103.45 Review of applications.
103.46 Criteria.

Subpart E—Bilingual Vocational Training

§ 103.41 Purpose.

In order to insure that vocational training programs are available to persons in all communities of the United States whose language as normally used is other than English, and in order to find new ways to assist such persons to fill the critical need for more and better trained personnel in occupational categories vital to both the persons and the economy, funds available to the Commissioner pursuant to Part J of the Act may be used for making grants or contracts for bilingual vocational training programs.

(20 U.S.C. 1393)

§ 103.42 Eligible programs and projects.

Funds available under section 193 of Part J of the Act may be used by the Commissioner to award grants or contracts for the cost of developing and operating programs or projects designed to carry out the purpose set forth in § 103.41 in an amount equal to the total sums expended by the applicant for the purposes set forth in that application. Such programs include:

(a) Bilingual vocational training programs for persons who have completed or left elementary or secondary school and who are available for training programs by the agencies and institutions enumerated in § 103.43;

(b) Bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

(c) Training allowances for participants in bilingual vocational training programs subject to the same conditions

and limitations as set forth in the Department of Labor Regulations 29 CFR § 95.34.

(20 U.S.C. 1393(d))

§ 103.43 Eligible applicants.

(a) The following categories of agencies or institutions are eligible for grants or contracts under this subpart:

(1) Local educational agencies;

(2) State educational agencies;

(3) Postsecondary educational institutions;

(4) Private nonprofit vocational training institutions; and

(5) Nonprofit educational or training organizations especially created to serve a group whose language as normally used is other than English.

(b) Private for-profit agencies and organizations are only eligible for contracts.

(20 U.S.C. 1393(c))

§ 103.44 Applications for grants or contracts.

(a) All applications shall be submitted to the Commissioner through the State board and shall include the comments of the State board.

(b) Each application shall:

(1) Provide that the activities and services for which assistance under this part is sought will be administered by or be under the supervision of the applicant; and

(2) Set forth a program of such size, scope and design as will make a substantial contribution toward carrying out the programs described in § 103.42.

(20 U.S.C. 1393(e))

§ 103.45 Review of applications.

(a) The Commissioner of Education will not approve any application for a grant or contract under this subpart until:

(1) Such application has been reviewed in accordance with such procedures as the Commissioner may establish; and

(2) Such review will take into account the requirements set forth in § 103.44 (b)).

(b) Where feasible the Commissioner should consult with the State board to achieve equitable distribution of assistance in the State.

(20 U.S.C. 1393(f))

§ 103.46 Criteria.

Criteria for the selection of applicants shall be those set forth in § 100a.26(b) of this chapter and those in Appendix D to this part.

4. Appendix D is added to read as follows:

APPENDIX D—BILINGUAL VOCATIONAL TRAINING PROGRAMS CRITERIA FOR FISCAL YEAR 1975

In granting of awards from funds available for the program, the Commissioner will give priority to applications which rank highest on the basis of the criteria in the Office of Education's General Provisions Regulations (45 CFR 100a.26(b)) together with the additional criteria in this Appendix. Certain points will be given to applications which propose programs in the priority areas described below.

A. *Program Priority.* Priority will be given to bilingual vocational training programs or projects which serve persons:

(a) Who have left or completed elementary or secondary school;

(b) Who are of limited English-speaking ability;

(c) Who, because of this handicap, are unable to be employed in gainful employment suited to their needs, interests and abilities; and

(d) Who are from areas having a concentration of persons of limited English-speaking ability higher than the national average.

B. *Application review criteria.* Criteria will be utilized by the reviewers in reviewing formally transmitted applications in Fiscal Year 1975. These criteria are consistent with § 100a.26, Review of Applications, in the Office of Education's General Provisions Regulations, published on November 6, 1973 at 39 FR 30654 (45 CFR 100a.26(b)). Segments or a segment of the application must address each criterion area. Each criterion is weighted and includes the maximum score that can be given to a segment of an application in relation to the criteria. The criteria and maximum weights for each criterion are as follows:

Criteria:	*Maximum score*
(1) *Priority Area*—Application is focused on the announced priority area.	15
(2) *Need*—Application clearly defines the needs for the project or program and delineates the training required to be responsive to those needs.	15
(3) *Objectives*—The objectives of the proposed project or program are sharply defined, clearly stated, capable of being attained by the proposed procedures and provisions are made for adequate evaluation of the project or program.	15
(4) *Plan*—The application clearly describes the general scope and design for the project or program. The procedures specify in detail how each objective will be accomplished, and an adequate project management plan is available. If appropriate, include inservice training, evaluation procedures and dissemination plans.	20
(5) *Results*—The proposed results of the training are identified and described.	10
(6) *Personnel*—The qualifications and experience of personnel are appropriate for the proposed project or program.	10
(7) *Institutional Commitment*—The application shows reasonable evidence of commitment to provide adequate curriculum facilities, equipment and provides documented assurance of support from cooperating institutions and agencies when necessary for project or program success.	5
(8) *Budget*—The estimated cost is reasonable in relation to anticipated results, and the size, scope, and duration of the project or program are reasonable.	10

[FR Doc.75-11299 Filed 4-29-75;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-22; Amdt. 171-29]

PART 171—GENERAL INFORMATION AND REGULATIONS

Matter Incorporated by Reference

The purpose of this amendment to the Hazardous Materials Regulations is to update the reference to sections VIII (Division I) and IX of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

On December 17, 1974, the Board published a notice of proposed rule making, Docket HM-22; Notice 74-13 (39 FR 43638) proposing to make the above change. No comments have been received in this docket.

In consideration of the foregoing, 49 CFR Part 171 is amended by revising paragraph (d)(1) of § 171.7 to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(1) ASME Code means sections VIII (Division I) and IX of the 1974 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through June 30, 1974.

* * * * *

Effective date: May 30, 1975. However, immediate compliance with the regulations, as amended herein, is authorized.

(18 U.S.C. 831-835; Sec. 6, Pub. L. 89-670, 80 Stat. 937 (49 U.S.C. 1655); Title VI and Sec. 902(h) of Pub. L. 85-726 (49 U.S.C. 1421-1431, 1472(h)))

Issued in Washington, D.C. on April 23, 1975.

R. P. SKULLY,
Board Member, for the Federal Aviation Administration.

ROBERT A. KAYE,
Board Member, for the Federal Highway Administration.

R. H. WRIGHT,
Alternate Board Member, for the Federal Railroad Administration.

J. V. CAFFREY,
Alternate Board Member, for the United States Coast Guard.

[FR Doc.75-11241 Filed 4-29-75;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-20; Notice 6]

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

This notice amends 49 CFR 555.10(b) to clarify that information made available for public inspection shall include all submitted materials that are specifically required by § 555.6. The amendment is effective May 30, 1975.

This amendment pertains to agency practice and is clarifying and interpretative in nature. Accordingly, pursuant to 5 U.S.C. 553(b), it is found that notice of proposed rulemaking is unnecessary.

Currently § 555.10(b) states that "Information made available for inspection shall not include materials not relevant to the petition that are to be withheld from the public in accordance with sections 112 and 113 of the Act (15 U.S.C. 14017, 1402) and section 552(b) of Title 5 of the United States Code."

Some petitioners for temporary exemptions on hardship grounds have requested that confidential treatment be given such items as estimated price increases that would be caused by compliance, projected balance sheets and income statements for the fiscal year following denial of a petition, or the efforts to be taken to achieve compliance while the exemption is in effect. The usual reason given is that the information could be harmful to the petitioner in the hands of its competitors. The NHTSA has uniformly denied such requests if they involve materials that the regulation specifically requires to be submitted. These materials are necessary for a determination by the NHTSA of whether the statutory basis for exemption exists. This agency finds that all materials it requests pursuant to the regulation, and which are used in its own decisions, should be available for inspection in the docket by members of the public who wish to reach their own conclusion on the merits of the petition. Materials submitted gratuitously will, of course, be withheld from availability for inspection, if the petitioner requests it and if it is a matter that may be withheld in accordance with sections 112, 113, and 158 of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, 49 CFR 555.10(b) is amended to read:

§ 555.10 Availability for public inspection.

* * * * *

(b) Information made available for inspection shall include all submitted materials that are specifically required by § 555.6, but shall not include materials not relevant to the petition for which confidentiality is requested, and may be granted, in accordance with sections 112, 113, and 158 of the Act (15 U.S.C. 1401, 1402, and 1418) and section 552(b) of Title 5 of the United States Code.

Effective date. May 30, 1975.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159, 15 U.S.C. 1410, sec. 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1407; delegation of authority at 49 CFR 1.51.)

Issued on April 24, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-11361 Filed 4-29-75;8:45 am]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Air Brake Systems; Correction

In FR Doc. 75-7346, appearing at page 12797 in the issue of Friday, March 21, 1975, on page 12798, the amendatory action numbered "3" is incorrect and is withdrawn.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.51).

Issued on April 25, 1975.

JAMES B. GREGORY,
Administrator.

[FR Doc.75-11359 Filed 4-29-75;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 180]

PLANT VARIETY PROTECTION

Limits of Reciprocity

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Agricultural Marketing Service proposes to amend the regulations and rules of practice (7 CFR pt. 180) for the administration of the Plant Variety Protection Act.

Statement of considerations. Section 43 of the Plant Variety Protection Act (7 U.S.C. 2403), and § 180.5(a) of the regulations and rules of practice (7 CFR 180.5(a)) under the act provide that protection under the act, may by regulation, be limited to nationals of the United States, except where this limitation would violate a treaty and except that nationals of a foreign state in which they are domiciled shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species.

The plant variety protection afforded by the Republic of South Africa to nationals of the United States does not appear to be equal to the protection afforded under the Plant Variety Protection Act. In order that applicants from the Republic of South Africa, their agents, and other interested persons may be informed with respect to the reciprocity limits recognized under section 43 of the act and § 180.5 of the regulations and rules of practice, an amendment is proposed as follows:

Section 180.5(a) would be amended by adding subparagraph (3) as follows:

§ 180.5 General requirements.

(a) * * *

(3) A certificate of plant variety protection issued to a national of the Republic of South Africa shall (i) expire in 15 years or less, pursuant to sections 42(b) and 83(b) of the Plant Variety Protection Act, from the date of issue of the certificate in the United States (ii) be applicable only for seed-reproduced species considered of economic importance and protectable in the Republic of South Africa (a list of such species may be obtained by writing to the Plant Variety Protection Office, Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, Maryland 20782 or to the Division of Seed Control, Hamilton Street, Private Bag 179, Pretoria, South Africa 0001) and (iii) not include a specification that the variety is to be sold by variety name only as a class of certified seed.

Any person who wishes to submit written data, views, or arguments concerning this proposal may do so by filing them with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by May 30, 1975.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.276).

Done at Washington, D.C. on April 24, 1975.

JOHN C. BLUM,
Associate Administrator.

[FR Doc.75-11318 Filed 4-29-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 57]

GRANTS FOR HEALTH MANPOWER EDUCATION INITIATIVE PROJECTS

Notice of Proposed Rulemaking

Notice is hereby given that the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart AA to Part 57 of Title 42, Code of Federal Regulations, as set forth in tentative form below, entitled "Grants for Health Manpower Education Initiative Projects."

The purpose of this new subpart is to establish regulations implementing section 774(a) of the Public Health Service Act (42 U.S.C. 295f-4(a)), which authorizes the Secretary of Health, Education, and Welfare to award grants to public or nonprofit private health or educational entities for projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel and the health services delivery system.

Written comments concerning the proposed regulations are invited from interested persons. Inquiries may be addressed, and data, views and arguments relating to the regulations may be presented in writing, preferably in triplicate, to the Director, Bureau of Health Resources Development, Health Resources Administration, 9000 Rockville Pike, Building 31, Room 5C02, Bethesda, Maryland 20014.

All comments received in response to this notice will be available for public inspection at the Office of Grants Policy, Bureau of Health Resources Development, Health Resources Administration, 9000 Rockville Pike, Building 31, 4C07, Bethesda, Maryland 20014 on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. All relevant material received not later than May 30, 1975, will be considered.

It is therefore proposed to add a new Subpart AA to Part 57 as set forth below:

Dated: April 7, 1975.

THEODORE COOPER,
Acting Assistant Secretary for Health.

Approved: April 24, 1975.

CASPAR W. WEINBERGER,
Secretary.

Subpart AA—Grants for Health Manpower Education Initiative Projects

Sec.

57.2601 Applicability.
57.2602 Definitions.
57.2603 Eligibility.
57.2604 Application.
57.2605 Project requirements.
57.2606 Evaluation and grant awards.
57.2607 Grant payments.
57.2608 Expenditure of grant funds.
57.2609 Nondiscrimination.
57.2610 Inventions or discoveries.
57.2611 Publications and copyright.
57.2612 Grantee accountability.
57.2613 Applicability of 45 CFR Part 74.
57.2614 Additional conditions.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 774(a), as amended, 85 Stat. 446, (42 U.S.C. 295f-4(a)).

§ 57.2601 Applicability.

The regulations of this subpart are applicable to the award of grants to public or nonprofit private health or educational entities under section 774(a) of the Public Health Service Act to assist in meeting the costs of projects to:

(a) Encourage the establishment or maintenance of programs to alleviate shortages of health personnel in areas designated by the Secretary as health personnel shortage areas through training or retraining such personnel in facilities located in such areas or to otherwise improve the distribution of health personnel by geographic area or by specialty group;

(b) Provide training programs leading to more efficient utilization of health personnel;

(c) Initiate new types and patterns or improve existing patterns of training, retraining, continuing education, and advanced training of health personnel, including teachers, administrators, specialists, and paraprofessionals (particularly physicians' assistants, dental therapists, and pediatric nurse practitioners);

(d) Encourage new or more effective approaches to the organization and delivery of health services (including emergency medical services) through training individuals in the use of the team approach to delivery of health services (including emergency medical services) and otherwise;

(e) Assist State, local, or other regional arrangements among schools and related organizations and institutions to carry out any of the above purposes; or

(f) Provide for (1) the discovery, collection, development or confirmation of information for, (2) the planning, development, demonstration, establishment, or maintenance of, or (3) the alteration or renovation of existing facilities for, any of the purposes described above.

§ 57.2602 Definitions.

As used in this subpart:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "Council" means the National Advisory Council on Health Professions Education (established by section 725 of the Act).

(d) "Budget period" means the interval of time into which the project period is divided for budgetary purposes, as specified in the grant award document.

(e) "Project period" means the total time for which support for a project has been approved, as specified in the grant award document.

(f) "Health or educational entity" means a public agency or organization or a private nonprofit organization which has the provision of health or educational programs as one of its major functions.

(g) "Nonprofit" as applied to any health or educational entity means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure, to the benefit of any private shareholder or individual.

(h) "Health personnel shortage areas" means areas designated by the Secretary as having a need for and shortage of persons trained in the health professions, based upon consideration of, among other pertinent factors: (1) The latest reliable statistical data available to him regarding numbers of health professions practitioners and the population to be served by such practitioners; (2) inaccessibility of medical services to the residents of the area; and (3) particular local health problems.

§ 57.2603 Eligibility.

To be eligible for a grant under this subpart an applicant shall:

(a) Be a public or nonprofit private health or educational entity; and

(b) Be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 57.2604 Application.

Each eligible health or educational entity desiring a grant award under this subpart shall submit an application in such form and at such time as the Secretary may prescribe.[1] The application shall contain a full description of the project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, a budget and justification of the amount of grant funds requested, and such other pertinent information as the Secretary may require. Such application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the regulations of this subpart and the terms and conditions of any award.

§ 57.2605 Project requirements.

To be considered for approval under this subpart, an application shall, at a minimum, meet each of the following requirements:

(a) Propose a project to improve the distribution, supply, quality, utilization, and efficiency of health personnel and the health services delivery system by promoting one or more of the purposes specified in section 774(a) of the Act.

(b) Provide evidence (including, as appropriate, supporting statistical data) satisfactory to the Secretary of the need for the particular type of project proposed.

(c) Describe the current efforts being made in the geographical area of the proposed project to meet the need set forth in paragraph (b) of this section, including the applicant's own efforts to meet such need.

(d) Set forth measurable objectives for the proposed project which are consistent with the purposes of section 774 (a) of the Act, including specific objectives for alleviating health manpower shortages, improving distribution of health personnel by area or specialty group, and promoting interdisciplinary team training.

(e) Provide a detailed plan for achieving the stated objectives of the proposed project.

(f) Describe the collaborative arrangements if any, required for the conduct of the project, indicating whether such arrangements have been accomplished or are proposed as an objective of the project.

(g) With respect to any proposed training program, provide evidence satisfactory to the Secretary that, where such exist, the proposed program meets relevant standards and guidelines established by appropriate:

(1) Accrediting bodies recognized by the Commissioner of Education, or

(2) Federal or State agencies, or

(3) Professional associations; unless the Secretary determines, for demonstration purposes, that the requirement of this paragraph should be waived on an application by application basis.

(h) Provide evidence satisfactory to the Secretary that the applicant will have available adequate qualified faculty, staff, equipment, and facility resources, including an appropriate setting or settings for the clinical experience required for the conduct of any proposed program.

(i) Describe a methodology for evaluating the proposed project in relation to the stated objectives, both general and specific.

(j) Provide a detailed budget for the proposed project, including the applicant's share of the costs.

(k) Describe the existing financial resources available to the applicant to assure the sound establishment and continued maintenance of the proposed project.

(l) Describe the extent to which the applicant has sought or obtained funds available under other Federal programs and from non-Federal sources for the conduct of the proposed project.

(m) Provide a timetable for carrying out the activities of the proposed project, including a plan for continuing them beyond the project period.

§ 57.2606 Evaluation and grant awards.

(a) Within the limits of funds available for such purpose, the Secretary, after consultation with the Council, may award grants to those applicants whose projects will, in his judgment, best promote the purposes of section 774(a) of the Act, taking into consideration, among other pertinent factors:

(1) The degree to which the project plan adequately provides for the elements set forth in § 57.2605;

(2) The potential effectiveness of the proposed project in carrying out such purposes;

(3) The local and national needs which the particular project proposes to serve;

(4) The quality of the staff and faculty which the proposed project will have available for providing any training program;

(5) The administrative and managerial capability of the applicant to carry out the proposed project; and

(6) The soundness of the fiscal plan for assuring effective utilization of grant funds and the potential of the project to continue on a self-sustaining basis.

(b) With respect to grants made in the fiscal year ending June 30, 1975, funding priority will be accorded to the following projects:

(1) To establish training programs for health professions students and students in physician extender programs (e.g., physicians' assistants and nurse practitioners) in designated health personnel shortage areas, as defined in § 57.2602(h), in order to improve the distribution of health personnel by geographic area or by specialty group.

(i) For purposes of this section, "health professions students" means students who are pursuing a course of study leading to a degree of doctor of medicine, doctor of dental surgery or an equivalent degree, doctor of osteopathy,

[1] Applications and instructions may be obtained from the Special Programs Staff, Bureau of Health Resources Development, Health Resources Administration, Department of Health, Education, and Welfare, 9000 Rockville Pike, Bethesda, Maryland 20014.

doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, bachelor of science in pharmacy or an equivalent degree, or doctor of veterinary medicine or an equivalent degree.

(2) To train health professions students, nursing students, public health students, and students in auxiliary health fields (such as physicians' assistants, dental therapists, physical therapists, dietitians, and nurse practitioners) in the use of the interdisciplinary team approach to the delivery of primary health care services. For purposes of this paragraph "delivery of primary health care services" means the provision of health services characterized by the delivery of first contact medicine, the assumption of longitudinal responsibility for the patient regardless of the presence or absence of disease, and the integration of the physical, psychological and social aspects of health care to the limits of the capability of the health personnel. Primary care shall include the fields of general practice, family practice, general internal medicine, general pediatrics, and general obstetrics and gynecology.

(c) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for the direct costs of the project, plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either (1) on the basis of his estimate of the actual indirect costs reasonably related to the project, or (2) on the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the actual indirect costs. Such award may include an estimated provisional amount for indirect costs or designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary. *Provided however,* That for the first year of the project, such amount may not exceed 90 percent of the total cost of the project; for the second year of the project, such amount may not exceed 75 percent of such cost; and for the last year of the project, such amount may not exceed 60 percent of such cost.

(d) All grants shall be in writing, shall set forth the amount of funds granted and the period for which such funds will be available for obligation by the grantee. The maximum period for which a project may receive grant support under this subpart shall be three years.

(e) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make an additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support, grantees must make separate application at such times and in such form as the Secretary may dictate.

§ 57.2607 Grant payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement of expenses incurred or to be incurred in the performance of the project to the extent he determines such payments are necessary to promote prompt initiation and advancement of the approved project..

§ 57.2608 Expenditure of grant funds.

(a) Any funds granted pursuant to this subpart shall be expended solely for carrying out the approved project in accordance with section 774(a) of the Act, the regulations of this subpart, the terms and conditions of the award and the cost principles prescribed by Subpart Q of 45 CFR Part 74.

(b) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward and be available for obligation during a subsequent budget period of the project period. The amount of a subsequent award will take into consideration the amount remaining in the grant account. At the end of the last budget period of the project period, any unobligated grant funds remaining in the grant account must be refunded to the Federal Government.

§ 57.2609 Nondiscrimination.

(a) Attention is called to the requirements of section 799A of the Act and 45 CFR Part 83 which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under Title VII of the Act to, or for the benefit of, any entity unless the application for the grant loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

(b) Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular to section 601 of such Act which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which is applicable to grants made under this subpart, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(c) Attention is called to the requirements of Title IX of the Education Amendments of 1972 and in particular to section 901 of such Act which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(d) Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(e) Grant funds used for alteration or renovation shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, 30 FR 12319 (Sept. 24, 1965), as amended, and with the applicable rules, regulations, and procedures prescribed pursuant thereto.

§ 57.2610 Inventions or discoveries.

Any grant award pursuant to this subpart is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary, or those he may designate, at such times and in such manner as he may determine necessary to carry out such Department regulations.

§ 57.2611 Publications and copyright.

(a) *State and local governments.* Where the grantee is a State or local government, as those terms are defined in 45 CFR 74.3, the Department of Health, Education, and Welfare copyright requirements set forth in 45 CFR 74.140 shall apply with respect to any book or other copyrightable materials developed or resulting from a project supported by a grant under this subpart.

(b) *Grantees other than State and local governments.* Where the grantee is not a State or local government, as so defined, except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films or similar materials developed or resulting from a project supported by a grant under this subpart, subject, however, to a royalty free, non-exclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 57.2612 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including income earned from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart: *Provided, however,* That when the amount awarded for indirect costs was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant, or from patents or inventions conceived or first actually reduced to practice in the course of or under such grant, shall be accounted for as follows:

(1) *State and local governments.* Where the grantee is a State or local government as those terms are defined in 45 CFR 74.3, royalties shall be accounted for as provided in 45 CFR 74.44.

(2) *Grantees other than State and local governments.* Where the grantee is not a State or local government as so defined, royalties shall be accounted for as follows:

(i) Patent royalties, whether received during or after the grant period, shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the grantee, pursuant to the Department's patent regulations (45 CFR Parts 6 and 8).

(ii) Copyright royalties, whether received during or after the grant period, shall first be used to reduce the Federal share of the grant to cover the cost of publishing or producing the materials, and any royalties in excess of the costs of publishing or producing the materials shall be distributed in accordance with Chapter 1-420, Department of Health, Education, and Welfare Grants Administration Manual.[2]

(c) *Grant closeout*—(1) *Date of final accounting.* A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of (i) any amount not accounted for pursuant to paragraphs (a) and (b) of this section; (ii) any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74. Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assigns by setoff or other action as provided by law.

§ 57.2613 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this subpart to State and local governments as those terms are defined in Subpart A of Part 74. The relevant provisions of the following subparts of Part 74 shall also apply to all other grantee organizations under this subpart:

SUBPART

- A General
- B Cash Depositories
- C Bonding and Insurance
- D Retention and Custodial Requirements for Records
- F Grant Related Income
- G Matching and Cost Sharing
- K Grant Payment Requirements
- L Budget Revision Procedures
- M Grant Closeout, Suspension, and Termination
- O Property
- Q Cost Principles

§ 57.2614 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interest of the public health, or the conservation of grant funds.

[FR Doc.75-11301 Filed 4-29-75;8:45 am]

[2] The Department of Health, Education, and Welfare Grants Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 75 038]

BACK BAY OF BILOXI, MISSISSIPPI

Drawbridge Operations

At the request of the Mississippi State Highway Department, the Coast Guard is considering establishing regulations for the semi-high level bascule span bridge on Interstate 110 across the Back Bay of Biloxi, mile 3.0, Biloxi, Mississippi, which would require at least 6 hours notice at all times prior to the bridge being opened. This bridge has a horizontal clearance of 132 feet and a vertical clearance of 60 feet above mean high water. This clearance will accommodate almost all vessel traffic. Since the completion of the bridge, the draw has been opened once in the last 10 months for the passage of a vessel.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Eighth Coast Guard District, Customhouse, New Orleans, Louisiana 70130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Eighth Coast Guard District.

The Commander, Eighth Coast Guard District, will forward any comments received before June 10, 1975, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new paragraph (i) (20-b) immediately after paragraph (i) (20-a) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * * *

(i) * * *

(20-b) *Back Bay of Biloxi, Mile 3.0.* The draw shall open on signal if at least 6 hours notice is given.

* * * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g) (2); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4)).

Dated: April 23, 1975.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.75-11222 Filed 4-29-75;8:45 am]

[33 CFR Part 117]

[CGD 75 076]

LAKE OKEECHOBEE, FLORIDA

Drawbridge Operations

At the request of the Florida Department of Transportation, the Coast Guard is considering revising the regulations for the State Road 717 drawbridge across the navigation channel between Torry Island and Lake Shore near Belle Glade, Florida, to require that the draw open on signal from 7 a.m. to 6 p.m., Monday through Thursday, and 7 a.m. to 7 p.m., Friday through Sunday. The draw is presently required to open on signal from 7 a.m. to 7 p.m. This change is being considered because there are infrequent requests for openings from 6 p.m. to 7 p.m., Monday through Thursday (there were three such openings in 1974).

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 SW. 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before May 29, 1975, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising paragraph (h)(28) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(h) * * *

(28) *Belle Glade Dike Bridge, Fla.* State Road 717 across the navigation channel, Lake Okeechobee between Torry Island and Lake Shore near Belle Glade, Florida. From 6 p.m. to 7 a.m., Monday through Thursday, and from 7 p.m. to 7 a.m., Friday through Sunday, the draw need not open for passage of vessels. At all other times the draw shall open on signal.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Dated: April 23, 1975.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.75-11225 Filed 4-29-75;8:45 am]

[33 CFR Part 117]

[CGD 75 086]

PEACE RIVER, FLORIDA

Drawbridge Operations

At the request of the Florida Department of Transportation, the Coast Guard is considering revising the regulations for the U.S. Highway 41, Barron Collier Bridge across the Peace River, Mile 2.0 to require that from 10 p.m. to 6 a.m. the draw open on signal if at least 2 hours notice is given. The draw is presently required to open on signal at all times. This change is being considered because of infrequent openings of the draw during this period (there were 14 during 1974).

Interested persons may participate in this proposed rule making by submitting written data; views, or arguments to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 SW. 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before June 3, 1975, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all comunications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new paragraph (i)(2-c) immediately after paragraph (i)(2-b) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(i) * * *

(2-c) *Peace River, Florida, U.S. Highway 41 Bridge (Barron Collier Bridge).* The draw shall open on signal from 6 a.m. to 10 p.m. From 10 p.m. to 6 a.m. the draw shall open on signal if at least 2 hours notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4)).

Dated: April 23, 1975.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.75-11223 Filed 4-29-75;8:45 am]

[33 CFR Part 117]

[CGD 75-099]

SNAKE RIVER AND CLEARWATER RIVER AT LEWISTON, IDAHO AND CLARKSTON, WASHINGTON

Drawbridge Operations

The flooding of Lower Granite Dam on the Snake River permits slack water navigation on the Snake River to Clarkston, Washington and Lewiston, Idaho. In preparation for navigation the vertical lift mechanism on the Interstate Bridge, across the Snake River at mile 139.6 has been reactivated. The new navigation clearance will provide 160 feet horizontal, 13 feet vertical (closed) and 45 feet vertical (open). The Camas-Prairie railroad bridge across the Clearwater River at mile 0.6 is being rebuilt. The new vertical span will provide a horizontal clearance of 232 feet and 7 feet vertical (closed) and 60 feet vertical (open). AA vertical clearances are measured from the normal pool level (738' above MSL).

At the request of the Washington State Highway Commission and the Union Pacific Railroad Company, the Coast Guard is considering revising the regulations for these bridges. Present regulations require the owners of both bridges to open the draws of the bridges on signal. The proposed regulations would require at least 30 minutes notice from 6 a.m. to 10 p.m., and notification prior to 9:3$ p.m. from any opening from 10 p.m. to 6 a.m. for the railroad bridge. The highway bridge would open on signal if at least 2 hours notice is given prior to times listed in the regulation.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Thirteenth Coast Guard District, 618 Second Avenue, Seattle, Washington 98104. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Thirteenth Coast Guard District.

The Commander, Thirteenth Coast Guard District, will forward any comments received before June 10, 1975, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new § 117.761 and a new § 117.762 immediately after § 117.760 to read as follows:

§ 117.761 Clearwater River at Lewiston, Idaho.

(a) *Camas Prairie Railroad Bridge, Mile 0.6.* From 6 a.m. to 10 p.m. the draw shall open on signal if at least 30 minutes notice is given to the Camas Prairie Railroad, Lewiston, Idaho. From 10 p.m. to 6 a.m. the draw shall open on signal if notice is given before 9:30 p.m.

(b) *Signals.* (1) The opening signal is two long blasts of a whistle, horn or other sound producing device.

(2) The acknowledging signal from the draw tender when the draw shall open is two long blasts.

(3) When the draw cannot open or must close immediately, the draw tender shall sound four short, rapid blasts which are repeated until acknowledged by the same signal from the vessel.

(4) A white flag by day or a white light at night swung in full circles at arm's length in full sight of and facing the drawbridge may be used in conjunction with sound signals.

(5) This bridge is equipped with an FM radiotelephone station and when communications have been established between the draw tender and an approaching vessel, the request for bridge opening and answering acknowledgment may be given by radiotelephone and sound and visual signals may be omitted.

(c) The owner of or agency controlling a bridge shall keep a copy of these regulations conspicuously posted, on both the upstream and downstream sides of the bridge, in such manner that it can be easily read at any time.

§ 117.762 Snake River at Lewiston, Idaho and Clarkston, Washington.

(a) *Idaho/Washington . Interstate Highway Bridge, Mile 139.6.* If at least 2 hours notice is given to the Washington State Department of Highways, the draw shall open on the following time schedule:

March 15 to November 15:
5 a.m.
6 a.m.
9 a.m.
10 a.m.
2 p.m.
3 p.m.
7 p.m.
8 p.m.
9 p.m.

November 16 to March 14:
9 a.m.
10 a.m.
2 p.m.
3 p.m.

(b) The owner of or agency controlling the bridge, shall keep a copy of these regulations conspicuously posted on both the upstream and downstream sides of the bridge, in such manner that it can be easily read at any time.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4)).

Dated: April 23, 1975.

R. L. PRICE,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.75-11224 Filed 4-29-75;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 75-8; Notice 1]

LAMPS, REFLECTIVE DEVICES, AND ASSOCIATED EQUIPMENT

Rectangular Headlamps

This notice proposes an amendment of 49 CFR § 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* that would allow use of four-lamp rectangular headlamp systems indefinitely, rather than ending September 1, 1976. The notice also requests comments on the advisability of a two-lamp rectangular system.

Motor Vehicle Safety Standard No. 108 was amended on November 30, 1973 (38 FR 33084) to specify requirements for rectangular headlamps that may be used as an option in a four-headlamp system until September 1, 1976. The amendments represented an interim solution rather than a final decision on the issues of rectangular headlamps and appropriate dimensions for them.

The agency stated its expectation that the world motor vehicle industry in 1974 and 1975, working through international standard organizations and trade and professional associations, would arrive at a consensus for one set of requirements for rectangular headlamps, including dimensions. The Administrator, after review, would then announce a final decision on the matter: whether to remain with the requirements and dimensions adopted in 1973, to propose and adopt others, or to revoke the option. A decision was also announced "that no petitions [would] be entertained for variant headlamp dimensions or system configurations before the end of that period, to avoid multiplying stock items and disrupting supply channels."

Ford Motor Company has petitioned for rulemaking to delete the August 31, 1976 termination date for Type 1A and Type 2A rectangular headlamps. It states that two major headlamp producers plan to produce the rectangular headlamps, and concludes that the design is being standardized. Ford argues that NHTSA's concern over aftermarket supply problems can best be alleviated by action that does not favor the single vehicle manufacturer presently using the lamps:

> The problem of aftermarket supply will be aggravated greatly if the Administrator decides, later in 1975, to obsolete the lamps of many vehicles on the road. Further, to orphan these vehicles and to obsolete a number of expensive manufacturing facilities by cancelling a perfectly acceptable design is unreasonable and does not contribute in any way to safety.

The NHTSA has tentatively decided to grant Ford's petition. The use of rectangular headlamp systems to date has not resulted in any problems of safety, so far as this agency knows. The lamps have been tested and approved by the American Association of Motor Vehicle Administrators. The government of Canada now permits rectangular headlamps identical to those of Standard No. 108, and has not adopted a termination date. With an increase in the number of manufacturers of rectangular headlamps, availability should be improved, the competitive base broadened, and the unit cost decreased. Finally, the agency understands that the new mechanical aimer required for mechanically aiming rectangular headlamps is also being furnished in sufficient quantities. This notice, therefore, represents the tentative final decision of the Administrator, to propose the continuation of the present four-lamp rectangular headlamp system indefinitely.

Since November 30, 1973, when the final rule was published, the population of small passenger cars using two-headlamp systems has increased, and it is apparent that passenger cars in forthcoming model years are likely to be smaller, on the average. The Administrator requests comments also on the advisability of proposing an amendment to Standard No. 108 that would allow a single two-lamp rectangular system.

In consideration of the foregoing it is proposed that paragraph S4.1.1.21 of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 be amended by deleting the phrase "manufactured between January 1, 1974 and September 1, 1976" and substituting the phrase "manufactured on or after January 1, 1974."

Interested persons are invited to submit written data, views, and arguments on this proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted. All comments received on or before the closing date indicated below will be considered and will be available in room 5108 for examination both before and after the closing date. To the extent possible comments filed after the closing date will be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The National Highway Traffic Safety Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Comment closing date: June 30, 1975.

Proposed effective date: Date of publication of final rule in the FEDERAL REGISTER.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 501.8 and 1.51.)

Issued on April 25, 1975.

ROBERT L. CARTER,
Associate Administrator, Motor Vehicle Programs.

[FR Doc.75-11360 Filed 4-29-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 367-4]

STATE OF DELAWARE

Proposed Revisions to State Implementation Plan; Correction

On March 31, 1975 (40 FR 14340), the Regional Administrator of EPA Region

III announced receipt of amendments to the Delaware State Implementation Plan (SIP) for the attainment and maintenance of national ambient air quality standards, to be proposed as a SIP revision. In accordance with the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, the Regional Administrator provided a 30-day public comment period.

The amendments consist of changes to Regulations I through XX of the Delaware Regulations Governing the Control of Air Pollution, for the purpose of updating, clarifying, and streamlining these regulations. The aforementioned FEDERAL REGISTER notice incorrectly stated the nature of some of these changes. The corrections consist of the following:

(1) Regulation II, *Regulations and Permits*, Section 5, *Complex Sources*, inadvertently included as part of the package of amendments to the Delaware SIP, is hereby withdrawn from further consideration as a revision to the State Implementation Plan.

(2) The major deletions also included the following sections originally contained in Regulation II:

Section 9—*Public Hearing on Suspended or Revoked Operating Certificate*.
Section 10—*Permits, Certificates Surrendered*
Section 13—*Disclosure of Information*

(3) Because of deletion of Regulation XIV, *Dumps and Sanitary Landfills*, Regulation XV through XX have been renumbered Regulations XIV through XIX respectively.

(4) The date of submittal should read "January 16, 1975," instead of "Janable during normal business hours at the

Because of these corrections and additions, comments with respect to these regulations will be accepted up to May 30, 1975.

Copies of the amendment are available during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

Delaware Department of Natural Resources and Environmental Control, Tatnall Building, Lockerman Street and Legislative Avenue, Dover, Delaware 19901.

Freedom of Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

All comments should be addressed to Howard Heim, Chief, Air Planning Branch, Division of Air and Hazardous Materials, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania, 19106 (Att: AH001DE).

(42 U.S.C. 1857c-5)

Dated: April 23, 1975.

A. R. MORRIS,
Acting Regional Administrator.

[FR Doc.75-11315 Filed 4-29-75;8:45 am]

[40 CFR Part 52]
[FRL 367-3]

STATE OF MARYLAND

Implementation Plan; Proposed Revision

On January 30, 1975, the State of Maryland submitted to the Administrator a proposed revision to the Maryland State Implementation Plan for the attainment and maintenance of national ambient air quality standards. The proposal consists of a request to grant an exception to the Bethlehem Steel plant at Sparrows Point from Maryland's process weight regulation [10.03.38.03E(2)] and testing procedures program [10.03.35.06A (1)]. The purpose of this exception request is to allow construction of a new sintering plant at the facility. The State of Maryland justifies this request for the following reasons:

(1) The new sintering plant represents a replacement of an existing operation which the company is unable to bring into compliance, rather than an additional source of pollution.

(2) The new sintering plant will result in a substantial reduction in emissions for this particular operation.

(3) The new sintering plant will comply with Maryland's grain loading requirement of 0.03 grains/standard cubic foot.

(4) The control device selected will produce minimum hydrocarbon and sulfur trioxide emissions, as well as provide the necessary particulate emission reduction determined necessary to meet standards.

The State of Maryland submitted proof that a public hearing with adequate public notice was held on August 26, 1974, in Baltimore, Maryland, pursuant to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

This notice is to advise the public of receipt of this request for an exception, and to request public comment on them. Only comments received before May 30, 1975, will be considered.

The Administrator's decision to approve or disapprove this exception request by the State of Maryland will be based on whether or not it meets the requirements of section 110(a)(2)(A)–(H) of the Clean Air Act and the requirements pursuant to 40 CFR Part 51.

Copies of the proposed revision, and the analysis on which it is based, are available for public inspection during normal business hours at the offices of the Environmental Protection Agency, Region III, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania, 19106; at the offices of the Maryland Bureau of Air Quality Control, 201 West Preston Street, Baltimore, Maryland, 21201; and at the Freedom of Information Center, EPA, 401 M Street SW., Washington, D.C. 20460. All comments should be addressed to Howard Heim, Chief, Air Planning Branch, Division of Air and Hazardous Materials, EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania, 19106 (ATT: AH003Md).

(42 U.S.C. 1857 c-5)

Dated: April 22, 1975.

DANIEL J. SNYDER,
Regional Administrator.

[FR Doc.75-11316 Filed 4-29-75;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Part 3, Part 260]

[Docket No. RM75-24]

CONTINUING INVESTIGATION OF ACTIVITIES OF NATURAL GAS PRODUCERS AND PRODUCING AFFILIATES

Extension of Time for Comments and Denying Motion for Conference

APRIL 23, 1975.

Take notice that on March 13, 1975, the Commission issued a notice of proposed rulemaking in Docket No. RM75-24 (published March 21, 1975, 40 FR 12817) instituting a proceeding to consider rules and regulations providing for systematic collection of data and information concerning producer and producing affiliate expenditures, exploration and development activities, reserve additions, production and revenues. Comments on the proposed rulemaking were due to be filed on or before April 30, 1975.

On April 7, 1975, Exxon Corporation (Exxon) filed a motion, joined in by separate motions of The California Company, A Division of Chevron Oil Company (Calco) on April 11, 1975, Gulf Oil Corporation (Gulf), and the Shell Oil Company on April 14, 1975, and the Amoco Production Company on April 17, 1975, that requested the date for the submission of comments be postponed until three weeks following a proposed conference to be held among all parties on a suggested date of May 14, 1975. Additionally, the movants requested the date proposed for the submission of the form itself, June 30, 1975, be changed to September 30, 1975.

In its original notice, the Commission stated that, if in comments the parties should request a conference, the Staff would consider such an option. The present requests would substantially alter the procedure set forth in the above referenced notice, and we do not believe such a change to be beneficial. The motions are, therefore, denied. The request for additional time for submission of comments is granted. Accordingly, comments on the proposed rulemaking will be due on or before May 14, 1975. Following the submission of comments the Staff will exercise its discretion with respect to holding a conference.

Since Form 64 would not be required to be submitted until after the comments filed are considered and an order issued promulgating the relevant sections of our regulations, movants request with respect to an extension of the

June 30, 1975, filing date need not be answered at this time.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11281 Filed 4-29-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 275]

[Release Nos. 34-11324, IA-448 File No. S7-559]

EXEMPTION OF INVESTMENT ADVISERS REGISTERED AS BROKER-DEALERS WITH RESPECT TO CERTAIN INVESTMENT ADVISORY SERVICES

Proposed Rulemaking

Correction

In FR Doc. 75-8740 appearing at page 14782 in the FEDERAL REGISTER of Wednesday, April 2, 1975 the following correction should be made: In § 275.206 (3)-1, in the sixth line of the "Note", the word "an" should read "any".

INTERSTATE COMMERCE COMMISSION

[49 CFR Chapter X]

[Ex Parte No. 289]

REMITTANCE OF DEMURRAGE CHARGES BY COMMON CARRIERS OF PROPERTY BY RAIL

Notice of Proposed Further and Amended Rulemaking and Order

At a General Session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 28th day of March 1975.

In the original notice of proposed rulemaking and order in this proceeding, dated October 12, 1972, the Interstate Commerce Commission ordered the institution of a proceeding under the provisions of Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), including 1(4), 1(5), 1(6), 1(10), 1(11), 1(13), 1(14), 1(15), 1(17), 1(21), 6(7), 13(4) and 15(1), thereof, the National Transportation Policy (49 U.S.C. preceding section 1), and the Administrative Procedure Act, 5 U.S.C. 553 and 559, to determine whether the facts and circumstances required or warranted the adoption of the following proposed regulation, or other regulations of similar purport applicable to common carriers of property by railroad subject to the Interstate Commerce Act:

> The non-owning railroad, on whose lines a car is being detained under demurrage, shall remit to the railroad car owner all demurrage charges collected in excess of $10 per car per day.

The Commission is now issuing an interim report adopting the principle of the proposed rule and reopening the proceeding for further evidence concerning its costs, benefits, and feasibility of implementation. Although participants are not precluded from advancing any arguments or evidence which they believe may aid the Commission in the disposition of this proceeding, the interim report delineates certain areas in which participants are encouraged to focus their presentations.

Several owners and lessees of private freight cars filed statements in the initial proceeding in support of the application of the remittance plan to private cars. The Commission has recognized merit in their position and has decided to allow private car participation if the rule is finally implemented.

This notice is being given to clarify the application of the rule in regard to private cars and to allow anyone affected or interested in this application adequate opportunity to participate in the further proceedings herein in order to protect their interests or otherwise express their views on this aspect of the proceeding. Also, since liberal intervention will be allowed, anyone desiring to participate in order to present evidence and arguments concerning the other issues in the further hearing is encouraged to do so by written statements.

Initial statements are due 120 days from the date of service of the interim report and reply statements are due 30 days thereafter. Any further motions or petitions should be filed within 30 days after reply statements are due.

It is ordered, That this notice of further and amended rulemaking proceedings be served upon the parties, and furnished to the general public by mailing a copy of this notice and order to the Governor of every State and to the Public Utilities Commission or Board having jurisdiction over transportation in each State, by depositing a copy of this order in the office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy thereof to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-11352 Filed 4-29-75;8:45 am]

[49 CFR Part 1307]

[No. 36135]

PUBLICATION OF EXCEPTIONS RATINGS HIGHER THAN CLASSIFICATION RATINGS

Notice of Proposed Rulemaking and Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C. on the 14th day of April, 1975.

The Interstate Commerce Commission is proposing to amend Part 1307 of Title 49 of the Code of Federal Regulations by § 1307.28. The amendment would require that exceptions ratings and rates exceeding the classification basis of determining rates and charges be justified in advance of their becoming effective.

According to long standing precedent, ordinarily the classification imposes the highest rating which a particular commodity should bear. Exceptions ratings higher than those in the governing classification are presumptively unreasonable and can be justified only by extraordinary circumstances. Exceptions Ratings on Magnesium Metals, 305 I.C.C. 318; Classifications in Middle Atlantic States, 42 M.C.C. 716.

Despite the fact that they are prima facie unlawful, exceptions ratings higher than the governing classification rating have been published in increasing numbers. While large shippers have the time, money, and expertise to identify and challenge presumptively unlawful rates, smaller shippers do not. Present remedies place small shippers at a disadvantage.

A requirement of advance justification is also intended to curtail government expenses. Most challenges to rates above the classification basis are brought by the United States as shipper. Such challenge involve actions by the particular challenging agency, the federal courts, and the Commission. If advance justification were required, then involvement by agencies and courts would be avoided. Furthermore, since most challenged rates are withdrawn, the carriers would be likely to submit only those rates which could be seriously defended.

The Traffic Committee of the Society of the Plastics Industry, Inc., filed a petition for rulemaking, proposing to establish procedures governing the publication of exception ratings exceeding the classification basis of determining rates and charges. They also note the widespread publication of presumptively unreasonable rates. That petition is supported, in toto, by the Traffic Committee of the Composite Can and Tube Institute, General Services Administration, Department of Defense, and the Comptroller General of the United States.

Upon consideration of the above-described matters, and good cause appearing therefor:

It is ordered, That a proceeding be, and it is hereby, instituted under the authority of Parts I and II of the Interstate Commerce Act (49 U.S.C. 1 and 301 et seq., specifically sections 316 and 317) and sections 553 and 559 of the Administrative Procedure Act (5 U.S.C. 553 and 559), to determine whether the facts and circumstances require or warrant the adoption of the proposed regulation set forth in this notice and order, or other regulations of similar purport applicable to common carriers of property by motor vehicle subject to the Interstate Commerce Act, and for the purpose of taking such other and further action as the facts and circumstances may justify and require.

It is further ordered, That all common carriers of property by motor vehicle operating in interstate or foreign commerce within the United States and subject to the Interstate Commerce Act be, and they are hereby, made respondents in this proceeding.

It is further ordered, That no oral hearing be scheduled for receiving of testimony in this proceeding unless a need should later appear, but that respondents or any other interested persons may participate in this proceeding by submitting for consideration written statements of facts, views, or arguments on the subject mentioned above, or any other subjects pertaining to this proceeding.

It is further ordered, That any person intending to participate in this proceeding by submitting initial statements or reply statements shall notify the Commission by the filing with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, on or before May 20, 1975.

It is further ordered, That the original and one copy of statements of intention to participate shall be so filed; that the Office of Proceedings then shall prepare and make available to all such persons a list containing the names and addresses of all parties to this proceeding, upon whom copies of all statements must be served; and that at the same time of the service of the service list the Commission will fix the time within which initial statements and reply statements must be filed.

And it is further ordered, That a copy of this notice and order be served on each respondent herein, that notice of the institution of this proceeding shall be given by mailing a copy of this notice and order to the Governor of every State and to the Public Utilities Commission or Board of each State having jurisdiction over transportation, that a copy be deposited in the office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and that a copy be delivered to the Director, Division of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons.

Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, Washington, D.C., during regular business hours.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

Section 1307.28 would be amended by adding a new paragraph (a) (4) to read as follows:

§ 1307.28 Statement of rates.

(a) *Explicit statement; maximum reasonableness.*

* * * * *

(4) It is a principle of long-standing that classification classes or ratings and class rates governed by such classes or ratings generally provide the highest rates and charges which an article should bear. It follows that any tariff provision (e.g. exception rating, commodity rate, charge, rule, etc.) the application of which in any case would result in a higher charge than otherwise would result from application of the classification class or rating and rules to the class rates would require special justification. Therefore, accompanying the tender to the Commission of a tariff, supplement, or loose-leaf page which names such a tariff provision, there shall be a clear statement by the publishing carrier or agent of the justification relied upon to warrant the higher charges. Any such publication not accompanied by a statement of justification shall be subject to rejection. This subparagraph does not apply (1) in connection with minimum charges for small shipments (provided they are based on weights not over 500 pounds), (2) with respect to publication of rates and provisions for a special service which under the tariff the shipper has the option of using by requesting it in writing (e.g. expedited service, exclusive use of vehicle, etc.), and (3) where no class rates are maintained by the carrier for whose account the class or rating, commodity rate or rule is published. Nor does this rule serve to prohibit publication of class rate arbitraries under authority of § 1307.28(b) of this part. (See §§ 1307.28(f) (5) and 1307.32 for provisions governing the alternation of commodity rates with class rates, and see § 1307.37(d) (3), prohibiting alternation of exceptions with the classification.)

[FR Doc.75-11353 Filed 4-29-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Parts 252 and 253]

BUSINESS PRACTICES ON THE NAVAJO, HOPI, AND ZUNI RESERVATIONS

Retail Businesses and Credit Transactions; Notice of Proposed Rulemaking

APRIL 28, 1975.

The deadline for comments on the proposed revision to 25 CFR Part 252 and the proposed addition of 25 CFR Part 253 (relating to business practices on the Navajo, Hopi, and Zuni Reservations published at 40 FR 14320-14326 on March 30, 1975, is hereby extended to May 30, 1975. Accordingly interested persons may submit written comments, suggestions or objections regarding the proposed revision and addition to the Commissioner of Indian Affairs, Washington, D.C. 20245, on or before May 30, 1975.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.75-11472 Filed 4-29-75;10:21 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 11]

LUMP SUM DISTRIBUTIONS

Notice of Proposed Rule Making

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 June 16, 1975. 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, a person submitting written comments should not include therein material that he considers 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 rule making 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 his request, in writing, to the Commissioner by June 16, 1975. 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 402(a) (2), 402(e), and 7805 of the Internal Revenue Code of 1954 (88 Stat. 990, 987 and 68A Stat. 917; 26 U.S.C. 402(a) (2), 402(e), 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document proposes amendments to the Income Tax Regulations (26 CFR Part 1) in order to conform the regulations under sections 62, 72, 101, 122, 402, 403, 405, 652, and 1304 of the Internal Revenue Code of 1954 to the provisions of section 2005 of the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406, 88 Stat. 987), relating to taxation of certain lump sum distributions.

The amendments proposed relating to sections 62, 72, 101, 122, 403, 405, 652, and 1304 of the Code merely conform the regulations under those sections to the changes in the taxation of a lump sum distribution under section 402 of the Code, as amended by section 2005(a) of the Act.

Under section 402(a) (2) of the Code, as amended, a method of computing the capital gain portion of a lump sum distribution is provided. In general, the capital gain portion of a lump sum distribution will be an amount equal to the product of the total taxable amount of the lump sum distribution and a fraction, the numerator of which is the

number of calendar years of active participation before January 1, 1974, and the denominator of which is the total number of calendar years of active participation.

Under section 402(e)(1) of the Code, as amended, a separate tax is imposed on the ordinary income portion of a lump-sum distribution.

Under section 402(e)(2) of the Code, as amended, a special rule is provided for computing the separate tax on the ordinary income portion of a lump sum distribution if there have been one or more lump sum distributions after December 31, 1973, made with respect to the recipient within the 6-taxable-year period ending on the last day of the taxable year of the recipient in which the distribution is made.

Under section 402(e)(3) of the Code, as amended, a deduction is allowed from gross income equal to the amount of the ordinary income portion of the distribution included in the recipient's gross income.

Under section 402(e)(4) of the Code, as amended, definitions and special rules are provided for computing the separate tax, including the definition of a lump sum distribution and the computation of the ordinary income portion of a lump sum distribution.

Under proposed § 1.402(e)-2(c)(1), a special method for computing the separate tax on a distribution including an annuity contract is provided. In such a case, the adjusted total taxable amount must be determined. For taxable years beginning before January 1, 1975, the adjusted total taxable amount is defined as the sum of the total taxable amount of the lump sum distribution for the taxable year, and the current actuarial value of annuity contracts distributed to the recipient reduced by the portion of the net amount contributed by the employee which is allocable to the annuity contract. For taxable years beginning after December 31, 1974, the adjusted total taxable amount is defined as the sum of the total taxable amount of the lump sum distribution for the taxable year, and the current actuarial value of annuity contracts distributed to the recipient reduced by the excess of the net amount contributed by the employee over the cash and other property distributed.

Under proposed § 1.402(e)-2(d)(1), a distribution to multiple recipients (except a payment or distribution solely to two or more trusts) cannot qualify as a lump sum distribution unless the amount of the distribution is otherwise includible in the income of the individual in respect of whom the distribution was made under the judicial doctrines of assignment of income or constructive receipt of income.

Under proposed § 1.402(e)-2(d)(3), the term "active participation" is defined so that active participation commences with the first month in which an employee becomes a participant under the plan and ends with the earliest of (1) the month in which the employee receives a lump sum distribution under the plan; (2) in the case of an employee without regard to section 401(e)(1), the month in which the employee separates from the service of the employer, (3) the month in which the employee dies, or (4) in the case of a self-employed individual who receives a lump sum distribution on account of disability, the first month in which he becomes disabled.

It is contemplated that upon adoption of the proposed amendments the Temporary Income Tax Regulations under section 402(e)(4)(B) (§ 11.402(e)(4)(B)-1) will be revoked.

Proposed amendments to the regulations. In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 2005 of the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406, 88 Stat. 987), such regulations are amended as follows:

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

1. In § 1.62 paragraphs (9) and (10) are reserved; § 1.62 is amended by adding a new paragraph (11) at the end thereof and revising the historical note. These added and revised provisions read as follows:

§ 1.62 Statutory provisions; adjusted gross income defined.

* * * * *

(9)-(10) [Reserved]

(11) *Certain portion of lump-sum distributions from pension plans taxed under section 402(e).* The deduction allowed by section 402(e)(3). Nothing in this section shall permit the same item to be deducted more than once.

[Sec. 62 as amended by sec. 7(b), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 828); sec. 213(b), Rev. Act 1964 (78 Stat. 52); sec. 2005(c)(9) Employee Retirement Income Security Act 1974 (88 Stat. 992)]

2. Paragraph (c) of § 1.62-1 is amended by reserving subparagraphs (12) and (13) and by adding a new subparagraph (14) at the end thereof. This added provision reads as follows:

§ 1.62-1 Adjusted gross income.

* * * * *

(c) * * *

(12)-(13) [Reserved]

(14) The deduction allowed by section 402(e)(3) for the ordinary income portion of a lump sum distribution.

3. Section 1.72-4(a)(1)(i) is amended by deleting "72(o)" and inserting in lieu thereof "72(n)". As amended, § 1.72-4(a)(1)(i) reads as follows:

§ 1.72-4 Exclusion ratio.

(a) *General rule.* (1) (i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (A) certain employee annuities described in section 72(d) and § 1.72-13, or (B) certain annuities described in section 72(n) and § 1.122-1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72-6 by the expected return under such contract as found under § 1.72-5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72-2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72-6.

* * * * *

4. Section 1.72-13(e)(3) is amended by deleting "72(o)" and inserting in lieu thereof "72(n)". As amended § 1.72-13(e)(3) reads as follows:

§ 1.72-13 Special rule for employee contributions recoverable in three years.

* * * * *

(e) *Inapplicability of section 72(d) and this section.* Section 72(d) and this section do not apply to: * * *

(3) Amounts paid to an annuitant under chapter 73 of title 10 of the United States Code with respect to which section 72(n) and § 1.122-1 apply.

5. Section 1.101 is amended by revising paragraph (b)(2)(B) and the historical note. As amended, these revised provisions read as follows:

§ 1.101 Statutory provisions; certain death benefits.

Sec. 101. *Certain death benefits.* * * *

(b) *Employees' death benefits.* * * *

(2) *Special rules for paragraph (1).* * * *

(B) *Nonforfeitable rights.* Paragraph (1) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. This subparagraph shall not apply to a lump sum distribution (as defined in section 402(e)(4))—

(i) By a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) Under an annuity contract under a plan described in section 403(a), or

(iii) Under an annuity contract purchased by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a), but only with respect to that portion of such total distributions payable which bears the same ratio to the amount of such total distributions payable which is (without regard to this subsection) includible in gross income, as the amounts contributed by the employer for such annuity contract which are excludable from gross income under section 403(b) bear to the total amounts contributed by the employer for such annuity contract.

* * * * * *

[Sec. 101 as amended by sec. 23(d), Technical Amendments Act 1958 (72 Stat. 1622); sec. 7(c), Self-Employed Individuals Tax Retirement Act of 1962 (80 Stat. 32); sec. 101

(j)(1), Tax Reform Act 1969 (Public Law 91-172, 83 Stat. 655); sec. 2005(c)(15), Employee Retirement Income Security Act 1974 (88 Stat. 922)]

6. Paragraph (d) of § 1.101-2 is amended by revising subparagraph (3) (i) and example (2) of subparagraph (3) (ii) to read as follows:

§ 1.101-2 Employees' death benefits.

* * * * *

(d) *Nonforfeitable rights.* * * *

(3) (i) Notwithstanding the rule stated in paragraph (d)(1) of this section and illustrated in paragraph (d)(2) of this section, the exclusion from gross income provided by section 101(b) applies to a lump sum distribution (as defined in section 402(e)(4)(A) and the regulations thereunder) with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) (i) and (ii)). See paragraph (d)(4) of this section relating to the exclusion of amounts which are received under annuity contracts purchased by certain exempt organizations and with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living.

(ii) The application of the provisions of paragraph (d)(3)(i) of this section may be illustrated by the following examples:

* * * * *

Example (2). The trustee of the X Corporation noncontributory, "qualified," profit-sharing plan is required under the provisions of the plan to pay to the beneficiary of B, an employee of the X Corporation who died on July 1, 1974, the benefit due on account of the death of B. The provisions of the profit-sharing plan give each participating employee, in case of termination of employment, a 10 percent vested interest in the amount accumulated in his account for each of the first 10 years of participation in the plan, but, in case of death, the entire balance to the credit of the participant's account is to be paid to his beneficiary. At the time of B's death, he had been a participant for five years. The accumulation in his account was $8,000, and the amount which would have been distributable to him in the event of termination of employment was $4,000 (50 percent of $8,000). After his death, $8,000 is paid to his beneficiary in a lump sum. (It may be noted that these are the same facts as in example (5) of subparagraph (2) of this paragraph except that the employee has been a participant for five years instead of three and the plan is a "qualified" plan.) It is immaterial that the employee had a nonforfeitable right to $4,000, because the payment of the $8,000 to the beneficiary is the payment of a lump sum distribution to which subdivision (i) of this subparagraph applies. Assuming no other death benefits are involved, the beneficiary may exclude $5,000 of the $8,000 payment from gross income.

Example (3). The fact are the same as in example (2) except that the beneficiary is entitled to receive only the $4,000 to which the employee had a nonforfeitable right and elects, 30 days after B's death, to receive it over a period of ten years. Because the distribution is not a lump sum distribution and because B's interest is nonforfeitable, no exclusion from gross income is allowable with respect to the $4,000.

Example (4). The X Corporation instituted a trust, forming part of a "qualified" profit-sharing plan for its employees, the cost thereof being borne entirely by the corporation. The plan provides, in part, that if an employee leaves the employ of the corporation, either voluntarily or involuntarily, before retirement, 10 percent of the account balance provided for the employee in the trust fund will be paid to the employee for each of the first 10 years of service. The plan further provides that if an employee dies before reaching retirement age, his beneficiary will receive a percentage of the account balance provided for the employee in the trust fund, on the same basis as shown in the preceding sentence. A, an employee of the X Corporation for 5 years, died before attaining retirement age while in the employ of the corporation. At the time of his death, $15,000 was the account balance provided for him in the trust fund. His beneficiary receives $7,500 in a lump sum, an amount equal to 50 percent of the account balance provided for A's retirement. The beneficiary may exclude from gross income (assuming no other death benefits are involved) $5,000 of the $7,500, since the latter amount constitutes a lump sum distribution to which subdivision (i) of this subparagraph applies.

7. Section 1.122 is amended by deleting "72(o)" in section 122(b)(2) and inserting in lieu thereof "72(n)". As amended, § 1.122(b)(2) reads as follows:

§ 1.122 Statutory provisions; certain reduced uniformed services retirement pay.

Sec. 122. Certain reduced uniformed services retirement pay. * * *

(b) *Special rule.* * * *

(2) *Consideration for the contract.* For purposes of paragraph (1) and section 72(n), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) The total amount of the reductions before January 1, 1965, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) Any amounts deposited at any time by him pursuant to section 1438 of such title 10.

[Sec. 122 as added by sec. 1(a)(1), Act of Mar. 8, 1966 (80 Stat. 32); as amended by sec. 2005(c)(10), Employee Retirement Income Security Act 1974 (88 Stat. 992)]

8. Section 1.122-1 is amended by deleting "72(o)" each place it appears and inserting in lieu thereof "72(n)". As amended, § 1.122-1(b)(2)(ii) and examples (2) and (3) of § 1.122-(d) read as follows:

§ 1.122-1 Applicable rules relating to certain reduced uniformed services retirement pay.

* * * * *

(b) *Rule applicable after December 31, 1965* * * *

(2) * * *

(ii) Upon the death of a member or former member of the uniformed services, where the "consideration for the contract" (as described in paragraph (b)(2)(iii) of this section has not been excluded in whole or in part from gross income under section 122(b) and (b)(2)(i) of this section, the survivor of such member who is receiving an annuity under chapter 73 of title 10 of the United States Code shall, after December 31, 1965, exclude from gross income under section 72(n) and this section such annuity payments received after December 31, 1965, until there has been so excluded annuity payments equalling the portion of the "consideration for the contract" not previously excluded under paragraph (b)(2)(i) of this section.

* * * * *

(d) *Examples.* The rules discussed in paragraph (a) of this section may be illustrated by the following examples:

* * * * *

Example (2). Assume the facts in Example (1) except that A retires on disability resulting from active service and his disability is rated at 40 percent. The entire amount of disability retirement pay, prior to and including 1966, is excludable from gross income under sections 104(a)(4) and 105(d), and in 1966, section 122(a). Assume further that A attains retirement age on December 31, 1966, dies on January 1, 1967, and his widow then begins receiving a survivor annuity under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431). A's widow may exclude from gross income in 1967 and 1968 under section 72(n) and paragraph (b)(2)(ii) of this section, the $1,800 of "consideration for the contract" i.e., the reductions in 1963, 1964, and 1965 to provide the survivor annuity. Thus, A's widow will exclude all of the survivor annuity she receives in 1967 ($1,350) and $450 of the $1,350 annuity received in 1968. In addition, if A had not attained retirement age at the time of his death, his widow would, under section 101 and paragraph (a)(2) of § 1.101-2, exclude up to $5,000 subject to the limitations of paragraph (b)(2)(ii) of this section.

Example (3). Assume, in the previous example, that A dies on January 1, 1965, and his widow then begins receiving a survivor annuity. Assume further that A's widow is entitled to exclude under section 72(b) $1,000 of the $1,350 she received in 1965. Under section 72(n) and paragraph (b)(2)(ii) of this section, A's widow for 1966 will exclude the $300 remaining consideration for the contract ($1,200-$1,000) and will include $1,150 of the survivor annuity in gross income.

* * * * *

9. Section 1.402(a) is amended by revising subparagraph (2) and the historical note. As amended, these revised provisions read as follows:

§ 1.402(a) Statutory provisions; taxability of beneficiary of employees' trust; exempt trust.

Sec. 402. *Taxability of beneficiary of employees' trust*—(a) *Taxability of beneficiary of exempt trust*— * * *

(2) *Capital gains treatment for portion of lump sum distributions.* In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(A) The numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

(B) The denominator of which is the number of calendar years of active participation by the employee in such plan, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the

fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

* * * * *

[Sec. 402(a) as amended by sec. 4(c) Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 825); sec. 221(c)(1), Rev. Act 1964 (78 Stat. 75); sec. 2005(b)(1), Employee Retirement Income Security Act 1974 (88 Stat. 990)]

* * * * *

10. Section 1.402(a)-1 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(2), (a)(5), (a)(6), (a)(7), (a)(9), and (b)(1) to read as follows:

§ 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) *In general.* (1) * * *

(ii) The provisions of section 402(a) relate only to a distribution by a trust which is described in section 401(a) and which is exempt under section 501(a) for the taxable year of the trust in which the distribution is made. With three exceptions, the distribution from such an exempt trust when received or made available is taxable to the distributee or recipient to the extent provided in section 72 (relating to annuities). First, for taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums); as in effect before such date, shall not apply to such distributions. For taxable years begining after December 31, 1963, such distributions may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). For treatment of such total distributions, see (a)(6) of this section. Secondly, if the taxable year ends after December 31, 1969 and begins before January 1, 1974, the portion of the distribution treated as long-term capital gain is subject to the limitation under section 402(a)(5), as in effect on December 31, 1973. Thirdly, for taxable years beginning after December 31, 1973, a certain portion, described in section 402(a)(2), of a lump sum distribution, as defined in section 402(e)(4)(A) is taxable as long-term capital gain and a certain portion, described in section 402(e)(4)(E), may be taxable under section 402(e). For the treatment of such lump sum distributions, see paragraph (a)(9) of this section. Under certain circumstances, an amount representing the unrealized appreciation in the value of the securities of the employer is excludable from gross income for the year of distribution. For the rules relating to such exclusion, see paragraph (b) of this section. Furthermore, the exclusion provided by section 105(d) is applicable to a distribution from a trust described in section 401(a) and exempt under section 501(a) if such distribution constitutes wages or payments in lieu of wages for a period during which an employee is absent from work on account of a personal injury or sickness. See § 1.72-15 for the rules relating to the tax treatment of accident or health benefits received under a plan to which section 72 applies.

(iii) Except as provided in paragraph (b) of this section, a distribution of property (other than an annuity contract) by a trust described in section 401(a) and exempt under section 501(a) shall be taken into account by the recipient at its fair market value. For valuation of an annuity contract, see § 1.402(e)-2(c)(1)(ii)(F).

* * * * *

(2) If a trust described in section 401(a) and exempt under section 501(a) purchases an annuity contract for an employee and distributes it to the employee in a year for which the trust is exempt, and the contract contains a cash surrender value which may be available to an employee by surrendering the contract, such cash surrender value will not be considered income to the employee unless and until the contract is surrendered. For the rule as to nontransferability of annuity contracts issued after 1962, see paragraph (b)(1) of § 1.401-9. However, the distribution of an annuity contract must be treated as a lump sum distribution under section 402(e) for purposes of determining the separate tax imposed under section 402(e)(1)(A). If, however, the contract distributed by such exempt trust is a retirement income, endowment, or other life insurance contract and is distributed after October 26, 1956, the entire cash value of such contract at the time of distribution must be included in the distributee's income in accordance with the provisions of section 402(a), except to the extent that, within 60 days after the distribution of such contract, (i) all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101(a) (relating to life insurance proceeds), or (ii) such contract is treated as a rollover contribution under section 402(a)(5), as in effect after December 31, 1973. If the contract distributed by such trust is a transferable annuity contract issued after 1962, or a retirement income, endowment, or other life insurance contract which is distributed after 1962 (whether or not transferable), then notwithstanding the preceding sentence the entire cash value of the contract is includible in the distributee's gross income, unless within such 60 days such contract is also made nontransferable.

* * * * *

(5) If pension or annuity payments or other benefits are paid or made available to the beneficiary of a deceased employee or a deceased retired employee by a trust described in section 401(a) which is exempt under section 501(a), such amounts are taxable in accordance with the rules of section 402(a) and this section. In case such amounts are taxable under section 72, the "investment in the contract" shall be determined by reference to the amount contributed by the employee and by applying the applicable rules of sections 72 and 101(b)(2)(D). In case the amounts paid to, or includible in the gross income of, the beneficiaries of the deceased employee or deceased retired employee constitute a distribution to which paragraph (a)(6) or (9) (whichever applies) of this section is applicable, the extent to which the distribution is taxable is determined by reference to the contributions of the employee, by reference to any prior distributions which were excludable from gross income as a return of employee contributions, and by applying the applicable rules of sections 72 and 101(b).

(6) This subparagraph applies in the case of a total distribution made in a taxable year of the distributee or payee ending before January 1, 1970.

(i) If the total distributions payable with respect to any employee under a trust described in section 401(a) which in the year of distribution is exempt under section 501(a) are paid to, or includible in the gross income of, the distributee within one taxable year of the distributee on account of the employee's death or other separation from the service, or death after such separation from service, the amount of such distribution, to the extent it exceeds the net amount contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than six months. The total distributions payable are includible in the gross income of the distributee within one taxable year if they are made available to such distributee and the distributee fails to make a timely election under section 72(h) to receive an annuity in lieu of such total distributions. The "net amount contributed by the employee" is the amount actually contributed by the employee plus any amounts considered to be contributed by the employee under the rules of section 72(f), 101(b), and paragraph (a)(3) of this section, reduced by any amounts theretofore distributed to him which were excludable from gross income as a return of employee contributions. See, however, paragraph (b) of this section for rules relating to the exclusion of amounts representing net unrealized appreciation in the value of securities of the employer corporation. In addition, all or part of the amount otherwise includible in gross income under this paragraph by a nonresident alien individual in respect of a distribution by the United States under a qualified pension plan may be excludable from gross income under section 402(a)(4). For rules relating to such exclusion, see paragraph (c) of this section. For additional rules relating to the treatment of

total distributions described in this subdivision in the case of a nonresident alien individual, see sections 871 and 1441 and the regulations thereunder.

* * * * *

(7) The capital gains treatment provided by section 402(a)(2), as in effect for taxable years beginning before January 1, 1974, and paragraph (a)(6) of this section is not applicable to distributions paid during such years to a distributee to the extent such distributions are attributable to contributions made on behalf of an employee while he was a self-employed individual in the business with respect to which the plan was maintained. For the taxation of such amounts, see § 1.72-18. For the rules for determining the amount attributable to contributions on behalf of an employee while he was self-employed, see paragraphs (b)(4) and (c)(2) of such section.

* * * * *

(9) For taxable years beginning after December 31, 1973, in the case of a lump sum distribution (as defined in section 402(e)(4)(A)) made to a recipient which is an individual, estate, or trust, so much of the total taxable amount (as defined in section 402(e)(4)(D) and § 1.402(e)-2(d)(2)) of such lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(i) The numerator of which is the number of calendar years of active participation (as determined under § 1.402(e)-2(d)(3)(ii)) by the employee in such plan before January 1, 1974, and

(ii) The denominator of which is the number of calendar years of active participation (as determined under § 1.402(e)-2(d)(3)(ii)) by the employee in such plan,

shall be treated as gain from the sale or exchange of a capital asset held for more than six months. For purposes of this subparagraph, in the case of an individual who at no time during his participation under the plan is an employee within the meaning of section 401(c)(1), determination of whether any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under section 402(e)(4)(B) and § 1.402(e)-3.

(b) *Distributions including securities of the employer corporation*—(1) *In general.* (i) If a trust described in section 401(a) which is exempt under section 501(a) makes a distribution to a distributee, and such distribution includes securities of the employer corporation, the amount of any net unrealized appreciation in such securities shall be excluded from the distributee's income in the year of such distribution to the following extent:

(A) If the distribution constitutes a total distribution to which the regulations of paragraph (a)(6) of this section are applicable, or if the distribution would constitute a lump sum distribution as defined in section 402(e)(4)(A) (without regard to section 402(e)(4)(H)), the amount to be excluded is the entire net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation; and

(B) If the distribution is other than a total distribution to which paragraph (a)(6) of this section is applicable, or if the distribution is other than a lump sum distribution as defined in section 402(e)(4)(A) (without regard to section 402(e)(4)(H)), the amount to be excluded is that portion of the net unrealized appreciation in the securities of the employer corporation which is attributable to the amount considered to be contributed by the employee to the purchase of such securities.

The amount of net unrealized appreciation which is excludable under the regulations of (b)(1)(i)(A) and (B) of this shall not be included in the basis of the securities in the hands of the distributee at the time of distribution for purposes of determining gain or loss on their subsequent disposition. Further, the amount of net unrealized appreciation which is not included in the basis of the securities in the hands of the distributee at the time of distribution shall be considered as a gain from the sale or exchange of a capital asset held for more than six months to the extent that such appreciation is realized in a subsequent taxable transaction. However, if the net gain realized by the distributee in a subsequent taxable transaction exceeds the amount of the net unrealized appreciation at the time of distribution, such excess shall constitute a long-term or short-term capital gain depending upon the holding period of the securities in the hands of the distributee.

(ii) (A) For purposes of section 402(a) and of this section, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

(B) For purposes of this paragraph, for taxable years beginning after December 31, 1973, the term "distributee" means "recipient".

* * * * * *

11. Section 1.402(e) is amended to read as follows:

§ 1.402(e) Statutory provisions; tax on lump sum distributions.

Sec. 402. *Taxability of beneficiary of employees' trust.* * * *

(e) *Tax on lump sum distributions*—(1) *Imposition of separate tax on lump distributions*—(A) *Separate tax.* There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

(B) *Amount of tax.* The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

(C) *Initial separate tax.* The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

(i) The total taxable amount of the lump sum distribution for the taxable year, over

(ii) The minimum distribution allowance.

(D) *Minimum distribution allowance.* For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

(i) The lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

(E) *Liability for tax.* The recipient shall be liable for the tax imposed by this paragraph.

(2) *Multiple distributions and distributions of annuity contracts.* In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

(A) The amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

(B) That portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

(3) *Allowance of deduction.* The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

(4) *Definitions and special rules*—(A) *Lump sum distribution.* For purposes of this section and section 403, the term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(i) On account of the employee's death,
(ii) After the employee attains age 59½,
(iii) On account of the employee's separation from the service, or
(iv) After the employee has become disabled (within the meaning of section 72 (m) (7))

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401 (c) (1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c) (1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient.

(B) *Election of lump sum treatment.* For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

(C) *Aggregation of certain trusts and plans.* For purposes of determining the balance to the credit of an employee under subparagraph (A)—

(i) All trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(ii) Trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a) (2) shall not be taken into account.

(D) *Total taxable amount.* For purposes of this section and section 403, the term "total taxable amount" means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

(i) The amounts considered contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

(ii) The net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

(E) *Ordinary income portion.* For purposes of this section, the term "ordinary income portion" means, with respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(i) The numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

(ii) The denominator of which is the number of calendar years of active participation by the employee in such plan.

(F) *Employee.* For purposes of this subsection and subsection (a) (2), except as otherwise provided in subparagraph (A), the term "employee" includes an individual who is an employee within the meaning of section 401(c) (1) and the employer of such individual is the person treated as his employer under section 401(c) (4).

(G) *Community property laws.* The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

(H) *Minimum period of service.* For purposes of this subsection (but not for purposes of subsection (a) (2) or section 403(a) (2) (A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

(I) *Amounts subject to penalty.* This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m) (5) to the extent that section 72(m) (5) applies to such amounts.

(J) *Unrealized appreciation of employer securities.* In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

(K) *Securities.* For purposes of this subsection, the terms "securities" and "securities of the employer corporation" have the respective meanings provided by subsection (a) (3).

12. There are added immediately after § 1.402(e)–1 the following new sections:

§ 1.402(e)–2 Treatment of certain lump sum distributions made after 1973.

(a) *In general*—(1) *Tax imposed; deduction allowed.* For a taxable year, at the election of the recipient of a lump sum distribution, the ordinary income portion of such distribution is subject to the tax imposed by section 402(e) (1) (A) (hereinafter referred to as the "separate tax") and, under section 402(e) (3), an amount equal to such portion is allowable as a deduction from gross income (see section 62 (11), as added by sec. 2005(c) (9) of Pub. L. No. 93–406, and the regulations thereunder) to the extent such portion is included in the gross income of the taxpayer for such year. The separate tax imposed by section 402(e) (1) (A) is an addition to the tax otherwise imposed under chapter 1 of the Code and may be elected whether or not the tax otherwise imposed by such chapter is computed under part I of subchapter Q of such chapter (relating to income averaging). This section applies with respect to distributions or payments made, or made available, to a recipient after December 31, 1973, in taxable years of the recipient beginning after that date.

(2) *Cross references*—(i) *Computation; ordinary method.* Paragraph (b) of this section provides rules with respect to a distribution which is not a multiple distribution, and does not include an annuity contract.

(ii) *Computation; special method (distribution including an annuity contract).* Paragraph (c) (1) of this section provides rules with respect to a distribution which is not a multiple distribution and which includes an annuity contract.

(iii) *Computation; special method (multiple distribution).* Paragraph (c) (2) of this section provides rules with respect to a distribution which is a multiple distribution.

(iv) *Lump sum distribution.* For the definition of the term "lump sum distribution", see paragraph (d) (1) of this section.

(v) *Total taxable amount.* For the definition of the term "total taxable amount", see paragraph (d) (2) of this section.

(vi) *Ordinary income portion.* For the definition of the term "ordinary income portion", see paragraph (d) (3) of this section.

(vii) *Multiple distribution.* For the definition of the term "multiple distribution", see paragraph (c) (2) (ii) (E) of this section.

(viii) *Election.* For rules relating to the election of lump sum distribution treatment under this section, see § 1.402 (e)–3.

(b) *Ordinary method*—(1) *In general.* In the case of a distribution which is not included in a multiple distribution, and which does not include an annuity contract, if the recipient elects (under § 1.402(e)–3) to treat such distribution as a lump sum distribution under this section, the tax imposed by section 402(e) (1) (A) for the recipient's taxable year is an amount equal to the initial separate tax (determined under paragraph (b) (2) of this section) for such taxable year, multiplied by a fraction—

(i) The numerator of which is the ordinary income portion (determined under paragraph (d) (3) of this section) of such lump sum distribution for such taxable year, and

(ii) The denominator of which is the total taxable amount (determined under paragraph (d) (2) of this section) of such lump sum distribution for such taxable year.

(2) *Computation of initial separate tax.* For purposes of subparagraph (1) of this paragraph, the initial separate tax is an amount equal to 10 times the tax which would be imposed by section 1(c) (relating to unmarried individuals (other than surviving spouses and heads of households)) if the recipient were an individual referred to in such section and the taxable income referred to in such

section were an amount equal to one-tenth of the excess of—

(i) The total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution, over

(ii) The minimum distribution allowance (determined under paragraph (b)(3) of this section).

(3) *Computation of minimum distribution allowance.* For purposes of paragraph (b)(2)(ii) of this section, the minimum distribution allowance is the lesser of—

(i) $10,000, or

(ii) One-half of the total taxable amount of the lump sum distribution for the taxable year,

reduced (but not below zero) by 20 percent of the excess (if any) of such total taxable amount over $20,000.

(4) *Example.* The application of this paragraph is illustrated by the following example:

Example. (i) On December 22, 1975, A separates fro mthe service of the M Corporation and receives a lump sum distribution of $65,000 from the M Corporation's contributory qualified plan. A's contributions to the plan as an employee were $15,000. A has been an active participant in the plan since February 20, 1966. A and his wife, B, are each age 50. Neither received an annuity contract from a qualified plan in 1974 or 1975. Neither received a lump sum distribution in 1974. A and B file a joint return for the calendar year 1975. Their income for 1975 consists of A's salary of $15,000 from the M Corporation and of $5,000 from the N Corporation. Their deductions for 1975 (other than deductions attributable to the distribution) consist of itemized deductions of $3,000. Their average base period income (determined under section 1302(b)(1)) for the four preceding taxable years (1971 through 1974) is $14,000. Assuming there are no changes in the applicable tax after 1974, A and B's income tax liability for 1975 is computed as follows.

(ii) A and B's gross income for 1975 is $70,000, computed by adding the total taxable amount of the lump sum distribution (determined under paragraph (d)(2) of this section) to their otherwise computed gross income [$15,000+$5,000+$65,000−$15,000]. Their adjusted gross income for 1975 is $40,000 [$70,000−($10,000+$20,000)] computed by reducing their gross income by the sum of the lump sum distributing deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$50,000 x 24/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution [($50,000 x 96/120) x 0.5]. A and B's joint taxable income is $35,500 (their itemized deductions are $3,000 and their personal exemptions total $1,500). A and B choose to apply the income averaging rules of section 1301 for 1975. Thus, A and B's income tax liability not including the separate tax on the ordinary income portion of the distribution is $8,828.

(iii) The minimum distribution allowance with respect to A's distribution is $4,000 [$10,000−(($50,000−$20,000)×0.2)]. The initial separate tax on A's distribution is 10 times the tax imposed by section 1(c), computed as if the taxable income therein described were $4,600 [$50,000−$4,000]. Thus, A's initial separate tax is $8,160. The separate tax on A's distribution is computed by multiplying the initial separate tax and the quotient of the ordinary income portion divided by the total taxable amount. Thus, the separate tax on A's distribution is $1,632 [$8,160×$10,000/$50,000].

(iv) A and B's total income tax liability for 1975 is the sum of the income tax as otherwise determined and the separate tax. Thus, A and B's total income tax liability for 1975 is $10,460 [$8,828+$1,632].

(c) *Special method*—(1) *Computation of separate tax on distribution including annuity contract and lump sum distribution*—(i) *Computation.* In the case of a distribution which is not included in a multiple distribution and which includes an annuity contract, if the recipient elects (under § 1.402(e)-3) to treat the portion of such distribution not consisting of an annuity contract as a lump sum distribution under this section, the separate tax imposed by section 402(e)(1)(A) of the recipient's taxable year is the excess (if any) of the adjusted separate tax over the tax attributable to the annuity contract (determined under paragraph (c)(1)(iii) of this section).

(ii) *Definitions.* For purposes of this section—

(A) *Adjusted separate tax.* The adjusted separate tax is an amount equal to the adjusted initial separate tax multiplied by a fraction—

(*1*) The numerator of which is the ordinary income portion of the distribution, and

(2) The denominator of which is the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution.

(B) *Adjusted initial separate tax.* The adjusted initial separate tax is an amount equal to 10 times the tax which would be imposed by section 1(c) (relating to unmarried individuals (other than surviving spouses and heads of households)) if the recipient were an individual referred to in such section and the taxable income referred to in such section were an amount equal to one-tenth of the excess of—

(*1*) the adjusted total taxable amount of the lump sum distribution, over

(2) The adjusted minimum distribution allowance.

(C) *Adjusted total taxable amount.* (*1*) For taxable years beginning before January 1, 1975, the adjusted total taxable amount is the sum of—

(*i*) The excess (if any) of the current actuarial value of annuity contracts distributed to the recipient, over the portion of the net amount contributed by the employee which is allocable to the contract, and

(*ii*) The total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution for the taxable year.

For purposes of (c)(1)(ii)(*A*)(*1*)(*i*) of this section, the net amount contributed by the employee which is allocable to the contract is an amount equal to the amounts considered contributed by the employee under the plan (determined by applying sections 72(f) and 101(b), and paragraph (b) of § 1.72-16) reduced by any amount theretofore distributed to the employee which were not includible in his gross income multiplied by a fraction, the numerator of which is the current actuarial value of the contract, and the denominator of which is the sum of such current actuarial value and the value of other property (including cash) distributed.

(2) For taxable years beginning after December 31, 1974, the adjusted total taxable amount is the sum of—

(*i*) The current actuarial value of annuity contracts distributed to the recipient, reduced by the excess, if any, of the net amount contributed by the employee (as defined in paragraph (d)(2)(ii)(A) of this section) over the cash and other property distributed, and

(*ii*) The total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution for the taxable year.

(D) *Adjusted ordinary income portion.* The adjusted ordinary income portion of a lump sum distribution is the amount which would be computed under paragraph (d)(3) of this section if "adjusted total taxable amount" is substituted for "total taxable amount" in such subparagraph.

(E) *Adjusted minimum distribution allowance.* The adjusted minimum distribution allowance is the lesser of—

(*1*) $10,000, or

(2) one-half of the adjusted total taxable amount of the lump sum distribution for the taxable year,

reduced (but not below zero) by 20 percent of the excess (if any) of the adjusted total taxable amount over $20,000.

(F) *Current actuarial value.* The current actuarial value of an annuity contract is the greater of—

(*1*) The cash value of the annuity contract (determined without regard to any loans under the contract) on the date of distribution, or

(2) The amount determined under the appropriate tables contained in publication No. 861, entitled "Annuity Factors for Lump Sum Distributions".

(iii) *Tax attributable to an annuity contract.* For purposes of subdivision (i) of this subparagraph, the tax attributable to an annuity contract is the product of—

(A) The quotient of the adjusted ordinary income portion (determined under paragraph (c)(1)(ii)(D) of this section) of the lump sum distribution divided by the adjusted total taxable amount (determined under paragraph (c)(1)(ii)(C) of this section), and

(B) 10 times the tax which would be imposed by section 1(c) (relating to unmarried individuals (other than surviving spouses and heads of households)) if the recipient were an individual referred to in such section and the taxable income were an amount equal to one-tenth of the excess of—

(*1*) The current actuarial value of the annuity contract, over

(2) The adjusted minimum distribution allowance multiplied by a fraction—

(*i*) The numerator of which is the current actuarial value of the annuity contract, and

(ii) The denominator of which is the adjusted total taxable amount (determined under paragraph (c)(1)(ii) of this section).

(iv) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). (i) On December 29, 1975, A separates from the service of the M Corporation and receives a distribution of the balance to the credit of his account under the M Corporation's noncontributory qualified plan. The distribution consists of cash of $44,000, and an annuity contract with a current actuarial value of $6,000. A has been a participant in the plan since March 26, 1966. A and his wife, B, are each age 50. Neither received a previous distribution from a qualified plan. A and B file a joint return for 1975. Their income for 1975, other than the distribution, consists of A's salary from the M Corporation of $15,000 and of $5,000 from the N Corporation. Their deductions (other than deductions attributable to the distribution) consist of itemized deductions of $3,000. They are not otherwise permitted to use income averaging for 1975 under section 1301. Assuming there are no changes in the applicable tax law after 1974, A and B's income tax liability for 1975 is computed as follows.

(ii) A and B's gross income for 1975 is $64,000, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$15,000+$5,000+$44,000]. Their adjusted gross income for 1975 is $37,600 [$64,000—($8,800+$17,600)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$44,000 x 24/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution [($44,000 x 96/120) x 0.5]. A and B's taxable income for 1975 is $33,100 (their itemized deductions are $3,000 and their personal exemptions total $1,500). Thus, A and B's income tax liability not including the separate tax on the ordinary income portion of the distribution is $9,122.

(iii) The adjusted total taxable amount of A's distribution is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's distribution is $50,000 [$6,000+$44,000]. The adjusted minimum distribution allowance with respect to A's distribution is the lesser of $10,000 or ½ of the adjusted total taxable amount, reduced by 20 percent of the excess (if any) of the adjusted total taxable amount over $20,000. Thus, the adjusted minimum distribution allowance with respect to A's distribution is $4,000 [$10,000—(($50,000—$20,000)×0.2)]. The adjusted initial separate tax on A's distribution is computed by multiplying 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $4,600 [($50,000—$4,000)/10]. Thus, A's adjusted initial separate tax is $8,160. The adjusted separate tax on A's distribution is computed by multiplying the adjusted initial separate tax by the quotient of the ordinary income portion divided by the total taxable amount. Thus, the adjusted separate tax on A's distribution is $1,632 ($8,160×$8,800/$44,000). The tax attributable to the annuity contract is 10 times the tax that would be imposed by section 1(c) computed as if the taxable income of a person described therein were $552

$$\frac{[\$6,000-(\$4,000\times\$6,000/\$50,000]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the tax attributable to the annuity contract is $166 [$778×$8,800/$44,000)]. The separate tax on A's distribution is computed by reducing the adjusted separate tax by the tax attributable to the annuity contract. Thus, the separate tax on A's distribution is $1,476 [$1,632—$156].

(iv) A and B's total income tax liability for 1975 is the sum of their income tax liability, as otherwise determined, and the separate tax. Thus A and B's total income tax liability for 1975 is $10,598 [$9,122+$1,476].

Example (2). (i) Assume the same facts as in example (1) except that the M Corporation's qualified plan is contributory and that A's contributions under the plan as an employee were $1,760, and the current actuarial value of the annuity contract which is distributed is $5,760.

(ii) A and B's gross income for 1975 is $62,240, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$15,000+$5,000+($44,000—$1,760)]. Their adjusted gross income for 1975 is $36,896 [$62,240—($8,448+$16,896)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$42,240×24/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution. [($42,240×96/120)×0.5]. A and B's taxable income for 1975 is $32,396 (their itemized deductions are $3,000 and their personal exemptions total $1,500). Thus A and B's income tax liability not including the separate tax on the ordinary income portion of the distribution is $8,826.

(iii) The adjusted total taxable amount of A's distribution is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's distribution is $48,000 [$5,760+($44,000—$1,760)]. The adjusted minimum distribution allowance with respect to A's distribution is the lesser of $10,000 or ½ of the adjusted total taxable amount, reduced by 20 percent of the excess of the adjusted total taxable amount over $20,000. Thus, the adjusted minimum distribution allowance with respect to A's distribution is $4,400 [$10,000—(($48,000—$20,000)×0.2)]. The adjusted initial separate tax on A's distribution is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $4,360 $\frac{[(\$48,000-\$4,400)]}{10}$. Thus, A's adjusted initial separate tax is $7,656. The adjusted separate tax on A's distribution is computed by multiplying the adjusted initial separate tax by the quotient of the ordinary income portion divided by the total taxable amount. Thus, the adjusted separate tax on A's distribution is $1,531 [$7,656×$3,448/$42,240]. The tax attributable to the annuity contract is 10 times the tax that would be imposed by section 1(c) computed as if the taxable income of a person therein described were $523 $\frac{[\$5,760-(\$4,400\times(\$5,760/\$48,000))]}{10}$ multiplied by the quotient described in the second preceding sentence. Thus, the tax attributable to the annuity contract is $147 [$735×$8,448/$42,240]. The separate tax on A's distribution is computed by reducing the adjusted separate tax by the tax attributable to the annuity contract. Thus, the separate tax on A's distribution is $1,384 [$1,531—$147].

(iv) A and B's total income tax liability for 1975 is the sum of their income tax liability, as otherwise determined, and the separate tax. Thus A and B's total income tax liability for 1975 is $10,210 [$1,384+$8,826].

Example (3). (i) On December 7, 1974, C separates from the service of P Corporation and receives a distribution of the balance to the credit of his account under the P Corporation's contributory qualified plan. The distribution consists of cash of $44,000, and an annuity contract with a current actuarial value of $6,000. C has been a participant in the plan since February 20, 1965. C's contributions under the plan as an employee were $2,000. C and his wife, D, are each age 50. Neither received a previous distribution from a qualified plan. C and D file a joint return for 1974. Their income for 1974, other than the distribution, consists of C's salary from the P Corporation of $20,000. Their deductions (other than deductions attributable to the distribution) consist of itemized deductions of $3,000. They are not otherwise permitted to use income averaging for 1974 under section 1301. C and D's income tax liability for 1974 is computed as follows.

(ii) C and D's gross income for 1974 is $62,240, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$20,000+($44,000—$1,760)]. Their adjusted gross income for 1974 is $39,008 [$62,240—($4,224+$19,008)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$42,240×12/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution ($42,240×108/120)×0.5]. C and D's taxable income for 1974 is $34,508 (their itemized deductions are $3,000 and their personal exemptions total $1,500). C and D's income tax liability for 1974 not including the separate tax on the ordinary income portion of the distribution is $9,713.

(iii) The adjusted total taxable amount of C's distribution is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of C's distribution is $48,000 [($6,000—$240)+($44,000—$1,760)]. The adjusted minimum distribution allowance with respect to C's distribution is the lesser of $10,000 or ½ of the adjusted total taxable amount, reduced by 20 percent of the excess of the adjusted total taxable amount over $20,000. Thus, the adjusted minimum distribution allowance with respect to C's distribution is $4,400 [$10,000—(($48,000—$20,000)×0.2)]. The adjusted initial separate tax on C's distribution is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $4,360

$$\frac{[(\$48,000-\$4,400)]}{10}$$

Thus, C's adjusted initial separate tax is $7,656. The adjusted separate tax on C's distribution is computed by multiplying the adjusted initial separate tax by the quotient of the ordinary income portion divided by the total taxable amount. Thus, the adjusted separate tax on C's distribution is $766 ($7,656×$4,224/$42,240). The tax attributable to the annuity contract is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $523

$$\frac{[\$5,760-(\$4,400\times\$5,760/\$48,000))]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the amount attributable to the annuity contract is $74 [$735×($4,224/$42,240)]. The separate tax on C's distribution is computed by reducing the adjusted separate tax by the tax attributable to the annuity contract. Thus, the

separate tax on C's distribution is $692 ($766—$74).

(iv) C and D's total income tax liability for 1974 is the sum of their income tax liability, as otherwise determined, and the separate tax. Thus, C and D's total income tax liability for 1974 is $10,405 [$9,713+$692].

(2) *Computation of separate tax in case of multiple distribution*—(i) *Computation.* In the case of a payment or distribution which is included in a multiple distribution, the separate tax imposed on such multiple distribution by section 402(e)(1)(A) for the recipient's taxable year is the excess (if any) of the modified separate tax, over the sum of—

(A) The aggregate amount of the separate tax imposed by section 402(e)(1)(A) paid during the lookback period, and

(B) The modified tax attributable to the annuity contract.

(ii) *Definitions.* For purposes of this section—(A) *Modified separate tax.* The term "modified separate tax" means an amount equal to the modified initial separate tax multiplied by a fraction—

(*1*) The numerator of which is the sum of the ordinary income portions of the lump sum distributions made within the lookback period, and

(2) The denominator of which is the sum of the total taxable amounts of the lump sum distributions made within the lookback period.

(B) *Modified initial separate tax.* The modified initial separate tax is an amount equal to 10 times the tax which would be imposed by section 1(c) (relating to unmarried individuals (other than surviving spouses and heads of households)) if the recipient were an individual referred to in such section and the taxable income referred to in such section were an amount equal to one-tenth of the excess of

(*1*) The modified total taxable amount of the lump sum distribution, over

(2) The modified minimum distribution allowance.

(C) *Modified total taxable amount.* The modified total taxable amount is the sum of the total taxable amounts (determined under paragraph (d)(2) of this section) of the distributions made during the lookback period and, in the case of a distribution made during such period to which paragraph (c)(1) of this section applied, the amount specified in paragraph (c)(1)(ii)(C) (*1*)(*i*) or (2)(*i*) of this section, whichever is applicable.

(D) *Modified minimum distribution allowance.* The modified minimum distribution allowance is the lesser of—

(*1*) $10,000, or

(2) one-half of the modified total taxable amount,

reduced (but not below zero) by 20 percent of the excess of the modified total taxable amount over $20,000.

(E) *Multiple distributions.* A distribution or payment received during a taxable year of the recipient which begins with or within a lookback period and after December 31, 1973, is included in a multiple distribution for such lookback period if—

(*1*) Any part of such distribution or payment (*i*) is treated as a lump sum distribution under this section or (*ii*) consists of a contract which would constitute all or a part of a lump sum distribution (determined without regard to section 402(e)(4)(B) and § 1.402(e)-3), except for the fact that it is an annuity contract, and

(2) a distribution or payment received in another such taxable year is treated as a lump sum distribution under this section.

For purposes of this subdivision (E), if the recipient of a lump sum distribution is a trust and if a beneficiary of such trust is an employee with respect to the plan under which the distribution is made, or treated as the owner of such trust for purposes of subpart E of part I of subchapter J of chapter 1 of the Code (relating to grantors and others treated as substantial owners), then such employee or owner shall be treated as the sole recipient of the lump sum distribution. For purposes of this subdivision (E), the term "an employee with respect to the plan under which the distribution is made" means an individual who, immediately before the distribution is made, is a participant in the plan under which the distribution is made.

(F) *Lookback period.* The lookback period with respect to any recipient is a period of 6 consecutive taxable years ending on the last day of the taxable year of the recipient in which a payment or distribution which is a multiple distribution is made.

(iii) *Modified tax attributable to an annuity contract.* For purposes of subdivision (i) of this subparagraph, the modified tax attributable to an annuity contract is equal to the product of—

(A) The quotient of the sum of the ordinary income portions (determined under paragraph (d)(3)) of the lump sum distributions received during the lookback period divided by the sum of the total taxable amounts (determined under paragraph (d)(2)) of the distributions made during the lookback period, and

(B) 10 times the tax which would be imposed by section 1(c) (relating to unmarried individuals (other than surviving spouses and heads of households)) if the recipient were an individual referred to in such section and the taxable income were an amount equal to one-tenth of the excess of—

(1) The sum of the amounts described in paragraph (c)(1)(ii)(C) (*1*)(*i*) or (2)(*i*) of this section in respect of the annuity contracts distributed during the lookback period, over

(2) The modified minimum distribution allowance multiplied by a fraction—

(*i*) The numerator of which is the sum of the amounts described in paragraph (C)(2)(iii)(B) in (*1*) of this section, and

(*ii*) The denominator of which is the modified total taxable amount (determined under paragraph (C)(2)(ii)(C) of this section).

(iv) The application of this subparagraph is illustrated by the following examples:

Example (*1*). (i) On December 7, 1976, A separates from the service of N Corporation and receives a distribution of the balance to the credit of his account under the N Corporation's noncontributory qualified plan. The distribution consists of cash of $4,000 and an annuity contract with a current actuarial value of $6,000. A has been a participant in the plan since October 13, 1967. A and his wife, B, are each age 50. A and B file a joint return for 1976. Their income for 1976, other than the distribution, consists of A's salary from N Corporation of $25,000 and interest income of $3,000. Their deductions (other than deductions attributable to the distribution) consist of itemized deductions of $2,100. They are not otherwise permitted to use income averaging for 1976 under section 1301. A received a distribution in 1975 from the M Corporation and elected lump sum treatment for such distribution. The ordinary income portion of such distribution was $10,000; the total taxable amount of such distribution was $50,000; the adjusted ordinary income portion and the adjusted total taxable amount of such distribution are the same as the ordinary income portion and the total taxable amount; and they paid a separate tax on such distribution of $1,632. Assuming there are no changes in the applicable tax law after 1974, A and B's income tax liability for 1976 is computed as follows:

(ii) A and B's gross income for 1976 is $32,000, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$25,000 + $3,000 + $4,000]. Their adjusted gross income for 1976 is $29,400 [$32,000 — ($1,200 + $1,400)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$4,000 × 36/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution [($4,000 × (84/120)) × 0.5]. A and B's taxable income for 1976 is $25,800 (their itemized deductions are $2,100 and their personal exemptions total $1,500). Thus, A and B's income tax liability for 1976, not including the separate tax on the ordinary income portion of the distribution is $6,308.

(iii) The adjusted total taxable amount of A's distribution for 1976 is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's 1976 distribution is $10,000 [$6,000+$4,000]. The modified total taxable amount is $60,000 [$50,000+$10,000]. The modified minimum distribution allowance with respect to A's 1976 distribution is the lesser of $10,000 or ½ of the modified total taxable amount, reduced by 20 percent of the excess (if any) of the modified total taxable amount over $20,000. Thus, the modified minimum distribution allowance with respect to A's 1976 distribution is $2,000 [$10,000—(($60,000—$20,000)×0.2)]. The modified initial separate tax on A's 1976 distribution is computed by multiplying 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $5,800

$$\frac{[(\$60{,}000-\$2{,}000)]}{10}$$

Thus, A's modified initial separate tax is $10,680. The modified separate tax on A's

1976 distribution is computed by multiplying the modified initial separate tax by the quotient of the sum of the ordinary income portions of the lump sum distributions received during the lookback period divided by the sum of the total taxable amounts of each lump sum distribution made during such period. Thus, the modified separate tax on A's 1976 distribution is $2,215 [$10,680 × ($10,000 + $1,200)/($50,000 + $4,000)]. The modified tax attributable to the annuity contract is 10 times the tax imposed by section 1(c) computed as if the taxable income of a person described therein were $580

$$\frac{[\$6,000-((\$6,000/\$60,000)\times\$2,000)]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the modified tax attributable to the annuity contract is $70 [$820 × ($10,000 + $1,200)/($50,000 + $4,000)]. The separate tax on A's 1976 distribution is computed by reducing the modified separate tax by the sum of the separate tax paid during the lookback period, and the modified tax attributable to the annuity contract. Thus, the separate tax on A's 1976 distribution is $413 [$2,215 − ($1,632 + $170)].

(iv) A and B's total income tax liability for 1976 is the sum of their income tax liability as otherwise determined, and the separate tax. Thus, A and B's total income tax liability for 1976 is $6,721 [$6,308 + $413].

Example (2). (i) Assume the same facts as in example (1) except that the N Corporation's qualified plan was contributory and that A's contributions under the plan as an employee were $800, and the current actuarial value of the annuity contract which is distributed is $4,800.

(ii) A and B's gross income for 1976 is $31,200, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$25,000 + $3,000 + ($4,000 − $800)]. Their adjusted gross income for 1976 is $29,120 [$31,200 − ($960 + $1,120)] computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$3,200 × 3%120] and the deduction allowed by section 1202 with respect ot the capital gains portion of the distribution [($3,200 × 8%120) × 0.5]. A and B's taxable deductions are $2,100 and their personal exemptions total $1,500). Thus, A and B's income tax liability for 1976, not including the separate tax on the ordinary income portion of the distribution, is $6,207.

(iii) The adjusted total taxable amount of A's distribution for 1976 is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's 1976 distribution is $8,000 [($4,800 + ($4,000 − $800)]. The modified total taxable amount is $58,000 [$50,000 + $8,000]. The modified minimum distribution allowance with respect to A's 1976 distribution is the lesser of $10,000 or ½ of the modified total taxable amount reduced by the excess, if any, of such modified total taxable amount over $20,000. Thus, the modified minimum distribution allowance with respect to A's 1976 distribution is $2,400 [$10,000 − [($8,000 + $50,000) − $20,000) × 0.2)]]. The modified initial separate tax on A's 1976 distribution is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were

$$\$5,560 \quad \frac{[(\$58,000-\$2,400)]}{10}$$

Thus, A's modified initial separate tax is $10,176. The modified separate tax on A's 1976 distribution is computed by multiplying the modified initial separate tax by the quotient of the sum of the ordinary income portions of each lump sum distribution received during the lookback period divided by the sum of the total taxable amounts of each lump sum distribution made during such period. Thus, the modified separate tax on A's 1976 distribution is $2,096 [$10,176 × ($10,000 + $960) / ($50,000 + $3,200)]. The modified tax attributable to the annuity contract is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were

$$\$460 \quad \frac{[(\$4,800-(\$2,400\times(\$4,800/\$58,000))]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the modified tax attributable to the annuity contract is $133 [$644 × ($10,000 + 960)/($50,000 + $3,200)]. The separate tax on A's 1976 distribution is computed by reducing the modified separate tax by the sum of the separate tax paid during the lookback period, and the modified tax attributable to the annuity contract. Thus, the separate tax on A's 1976 distribution is $331 [$2,096 − ($1,632 + $133)].

(iv) A and B's total income tax liability for 1976 is the sum of their income tax liability as otherwise determined, and the separate tax. Thus, A and B's total income tax liability for 1976 is $6,538 [$6,207 + $331].

Example (3). (i) Assume the same facts as in example (1) except that the distribution on December 7, 1976, from the N Corporation's noncontributory qualified plan consists only of an annuity contract with a current actuarial value of $6,000.

(ii) A and B's gross income for 1976 is $28,000, computed by adding the total taxable amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$25,000 + $3,000 + 0]. Their adjusted gross income for 1976 is $28,000 [$28,000 − ($0 + $0)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$0 × 36/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution [($0 × 84/120) × 0.5]. Their taxable income for 1976 is $24,400 (their itemized deductions are $2,100 and their personal exemptions total $1,500). Thus, A and B's income tax liability for 1976, not including the separate tax on the distribution is $5,804.

(iii) The adjusted total taxable amount of A's distribution for 1976 is the sum of the current actuarial value of the annuity contract distributed and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's 1976 distribution is $6,000 [$6,000 + $0]. The modified total taxable amount is $56,000 [$6,000 + $50,000]. The modified minimum distribution allowance with respect to A's 1976 distribution is the lesser of $10,000 or ½ of the modified total taxable amount, reduced by 20 percent of the excess (if any) of the modified total taxable amount over $20,000. Thus, the modified minimum distribution allowance with respect to A's 1976 distribution is $2,800 [$10,000 − ((($56,000 − $20,000) × 0.2)]. The modified initial separate tax on A's 1976 distribution is computed by multiplying 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $5,320

$$\frac{[\$56,000-\$2,800]}{10}$$

Thus, A's modified initial separate tax is $9,672. The modified separate tax on A's 1976 distribution is computed by multiplying the modified initial separate tax by the quotient of the sum of the ordinary income portions of the lump sum distributions received during the lookback period divided by the sum of the total taxable amounts of each lump sum distribution made during such period. Thus, the modified separate tax on A's 1976 distribution is $1,934 [$9,672 × ($10,000 + $0/($50,000 + $0))]. The modified tax attributable to the annuity contract is 10 times the tax imposed by section 1(c) computed as if the taxable income of a person described therein were $570

$$\frac{[(\$6,000-((\$6,000/\$56,000)\times\$2,800))]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the modified tax attributable to the annuity contract is $161 [$805 × ($10,000 + $0)/($50,000 + $0)]. The separate tax on A's 1976 distribution is computed by reducing the modified separate tax by the sum of the separate tax paid during the lookback period, and the modified tax attributable to the annuity contract. Thus, the separate tax on A's 1976 distribution is $141 [$1,934 − ($1,632 + $161)].

(iv) A and B's total income tax liability for 1976 is the sum of their income tax liability as otherwise determined, and the separate tax. Thus, A and B's total income tax liability for 1976 is $5,945 [$5,804 + $141].

Example (4). (i) Assume the same facts as in example (3) except that the N Corporation's qualified plan was contributory and that A's contributions under the plan as an employee were $2,000.

(ii) A and B's gross income for 1976 is $28,000, computed by adding the total amount (determined under paragraph (d)(2) of this section) of the lump sum distribution to their otherwise computed gross income [$25,000 + $3,000 + 0]. Their adjusted gross income for 1976 is $28,000 [$28,000 − ($0 + $0)], computed by reducing their gross income by the sum of the lump sum distribution deduction allowed by section 402(e)(3) with respect to the ordinary income portion of the distribution [$0 × 36/120] and the deduction allowed by section 1202 with respect to the capital gains portion of the distribution [($0 × 84/120) × 0.5]. Their taxable income for 1976 is $24,400 (their itemized deductions are $2,100 and their personal exemptions total $1,500). Thus, A and B's income tax liability for 1976, not including the separate tax on the distribution is $5,804.

(iii) The adjusted total taxable amount of A's distribution for 1976 is the sum of the current actuarial value of the annuity contract distributed, reduced by the excess of the net amount contributed by the employee over the cash and other property distributed, and the total taxable amount of the lump sum distribution. Thus, the adjusted total taxable amount of A's 1976 distribution is $4,000 [($6,000 − $2,000) + $0]. The modified $4,000]. The modified minimum distribution total taxable amount is $54,000. [$50,000 + allowance with respect to A's 1976 distributions is the lesser of $10,000 or ½ of the modified total taxable amount, reduced by 20 percent of the excess (if any) of the modified total taxable amount over $20,000. Thus, the modified minimum distribution allowance with respect to A's 1976 distribution is $3,200 [$10,000 − (($54,000 − $20,000) × 0.2)]. The modified initial separate tax on A's 1976 distribution is computed by multiplying 10 times the tax imposed by section 1 (c) computed as if the taxable income therein described were $5,080

$$\frac{[\$54,000-\$3,200]}{10}$$

Thus, A's modified initial separate tax is $9,168. The modified separate tax on A's 1976

distribution is computed by multiplying the modified initial separate tax by the quotient of the sum of the ordinary income portions of the lump sum distribution received during the lookback period divided by the sum of the total taxable amounts of each lump sum distribution made during such period. Thus, the modified separate tax on A's 1976 distribution is $1,833 [$9,168 × ($10,000+$0)/($50,000+$0)]. The modified tax attributable to the annuity contract is 10 times the tax imposed by section 1(c) computed as if the taxable income therein described were $376

$$\frac{[\$4,000-((\$4,000/\$54,000)\times\$3,200)]}{10}$$

multiplied by the quotient described in the second preceding sentence. Thus, the modified tax attributable to the annuity contract is $105 [$526 × ($10,000+$0)/($50,000+$0)]. The separate tax on A's 1976 distribution is computed by reducing the modified separate tax by the sum of the separate tax paid during the lookback period, and the modified tax attributable to the annuity contract. Thus, the separate tax on A's 1976 distribution is $96 [$1,833−($1,632+$105)].

(iv) A and B's total income tax liability for 1976 is the sum of their income tax liability as otherwise determined, and the separate tax. Thus, A and B's total income tax liability for 1976 is $5,900 [$5,804+$96].

(d) *Definitions.* (1) For purposes of this section and § 1.402 (e)–3—(1) *Lump sum distribution.* (i) For taxable years of a recipient beginning after December 31, 1973, the term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance under the plan to the credit of an employee which becomes payable, or is made available, to the recipient—

(A) On account of the employee's death,

(B) After the employee attains age 59½,

(C) In the case of an employee who at no time during his participation in the plan was an employee within the meaning of section 401(c)(1), on account of the employee's separation from the service, or

(D) In the case of an employee within the meaning of section 401(c)(1), after the employee has become disabled within the meaning of section 72(m)(7) and paragraph (f) of § 1.72–17,

from a trust forming part of a plan described in section 401(a) and which is exempt from tax under section 501(a) or from a plan described in section 403(a). Although periodic payments made under an annuity contract distributed under a plan described in the preceding sentence are taxed under section 72, solely for purposes of determining the adjusted total taxable amount or the modified total taxable amount, an annuity contract distributed from a plan described in the preceding sentence shall be treated as a lump sum distribution.

(ii)(A) A distribution or payment is not a lump sum distribution unless it constitutes the balance to the credit of the employee at the time the distribution or payment commences. For purposes of the preceding sentence, the time at which a distribution or payment commences shall be the date on which the requirements of subdivision (A), (B), (C), or (D) (whichever is applicable) of paragraph (d)(1)(i) of this section are satisfied, disregarding any previous distribution which constituted the balance to the credit of the employee.

(B) A distribution made before the death of an employee (for example, annuity payments received by the employee after retirement) will not preclude an amount paid on account of the death of the employee from being treated as a lump sum distribution by the recipient. Further, if a distribution or payment constitutes the balance to the credit of the employee, such distribution or payment shall not be treated as other than a lump sum distribution merely because an additional amount, attributable to the last or a subsequent year of service, is credited to the account of the employee and distributed.

(C) The application of this subdivision may be illustrated by the following example:

Example. A, an individual who is a calendar year taxpayer, retires from services with the M Corporation on October 31, 1975 after attaining age 59½. A begins to receive monthly annuity payments under the M Corporation's qualified plan on November 1, 1975. On February 3, 1976. A takes the balance to his credit under the M Corporation's plan in lieu of any future annuity payments. The balance to the credit of A under the M Corporation's plan is distributed to him on February 3, 1976, and as of such date he had not previously received any amount constituting a lump sum distribution. Such payments and distributions are not to be treated as a lump sum distribution because they are not paid within 1 taxable year of the recipient.

(iii) A payment or distribution described in paragraph (d)(1)(i) of this section which is made to more than one person (except a payment or distribution made solely to two or more trusts), shall not be treated as a lump sum distribution, unless the entire amount paid or distributed is included in the income of the employee in respect of whom the payment or distribution is made. Thus, for example, a distribution of the balance to the credit of the employee after the death of the employee made to the surviving spouse and his children cannot be treated as a lump sum distribution by the surviving spouse and children. However, a distribution to the employee's estate can be treated as a lump sum distribution even though the estate subsequently distributes the amount received to the surviving spouse and children.

(iv) The term "balance to the credit of the employee" does not include United States Retirement Plan Bonds held by a trust to the credit of an employee. Thus, a distribution or payment by a plan described in subdivision (i) of this subparagraph may constitute a lump sum distribution with respect to an employee even though the trust retains retirement plan bonds registered in the name of such employee. Similarly, the proceeds of a retirement plan bond received as a part of the balance to the credit of an employee will not be entitled to be treated as a lump sum distribution. See section 405(e) and paragraph (a)(4) of § 1.405–3.

(v) The term "balance to the credit of the employee" includes any amount to the credit of the employee under any plan which is required to be aggregated under the provisions of section 402(e)(4)(C) and paragraph (e)(1) of this section.

(vi) The term "balance to the credit of the employee" does not include any amount which has been placed in a separate account for the funding of medical benefits described in section 401(h) as defined in paragraph (a) of § 1.401–14. Thus, a distribution or payment by a plan described in subdivision (i) of this subparagraph may constitute the "balance to the credit of the employee" with respect to an employee even though the trust retains amounts attributable to the funding of medical benefits described in section 401(h).

(vii) The term "balance to the credit of the employee" includes any amount which is not forfeited under the plan as of the close of the taxable year of the recipient within which the distribution is made except that in the case of an employee who has separated from the service and incurs a break in service (within the meaning of section 411), such term does not include an amount which is forfeited at the close of the plan year, beginning with or within such taxable year, by reason of such break in service.

(viii) The balance to the credit of the employee is includible in the gross income of the recipient if the recipient fails to make a timely election under section 72(h) to receive an annuity in lieu of such balance.

(2) *Total taxable amount.* (i) The term "total taxable amount" means, with respect to a lump sum distribution described in the first sentence of paragraph (d)(1)(i) of this section, the amount of such lump sum distribution which exceeds the sum of—

(A) The net amount contributed by the employee, and

(B) The net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

(ii) For purposes of paragraph (d)(2)(i)(A) of this section, the term "net amount contributed by the employee" means—

(A) For taxable years beginning after December 31, 1974, the amount actually contributed by the employee plus any amounts considered to be contributed by the employee under the rules of sections 72(f) and 101(b), and paragraph (b) of § 1.72–16, reduced by any amounts theretofore distributed to him which were excludable from gross income as a return of employee contributions.

(B) For taxable years beginning before January 1, 1975, an amount equal to the product of the amounts considered contributed by the employee under the plan (determined by applying sections 72(f) and 101(b), and paragraph (b) of § 1.72–16) reduced by any amount theretofore distributed to the employee which

were not includible in his gross income, multiplied by a fraction—

(i) The numerator of which is the excess, if any, of the sum of the current actuarial value of the annuity contract distributed and the value of the other property (including cash) distributed, over such current actuarial value, and

(ii) The denominator of which is the sum of the current actuarial value of the annuity contract distributed and the value of other property (including cash) distributed.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, age 60, receives a lump sum distribution from the M Corporation's noncontributory qualified plan on November 24, 1975. The distribution of $25,000 consists of cash and M Corporation securities with net unrealized appreciation of $15,000. The total taxable amount of the distribution to A is $10,000.

Example (2). B, age 60, receives a lump sum distribution from the N Corporation's contributory qualified plan on December 29, 1975. The distribution consists of $25,000 in cash. B's contributions under the plan as an employee are $5,000. The total taxable amount of the distribution to B is $20,000.

Example (3). W receives a lump sum distribution on April 1, 1975, from the M Corporation's noncontributory qualified plan as beneficiary of H on account of H's death. The distribution consists of $25,000 in cash. The total taxable amount of distribution to W is $20,000 if W is otherwise allowed a $5,000 exclusion under section 101(b).

(3) *Ordinary income portion.* (i) The ordinary income portion of a lump sum distribution is the product of the total taxable amount of the lump sum distribution, multiplied by a fraction—

(A) the numerator of which is the number of calendar years of active participation by the employee in the plan after December 31, 1973, under which the lump sum distribution is made, and

(B) the denominator of which is the total number of calendar years of active participation by the employee in such plan.

(ii) For purposes of computing the fraction described in subdivision (i) of this subparagraph, the number of calendar years of active participation shall be the number of calendar months during the period beginning with the first month in which the employee became a participant under the plan and ending with the earliest of—

(A) The month in which the employee receives a lump sum distribution under the plan,

(B) In the case of an employee who is not an employee within the meaning of section 401(c)(1), the month in which the employee separates from the service,

(C) The month in which the employee dies, or

(D) In the case of an employee within the meaning of section 401(c)(1) who receives a lump sum distribution on account of disability, the first month in which he becomes disabled within the meaning of section 72(m)(7) and paragraph (f) of § 1.72-17.

In computing the months of active participation, in the case of active participation before January 1, 1974, a part of a calendar year in which the employee was an active participant under the plan shall be counted as 12 months, and in the case of active participation after December 31, 1973, a part of a calendar month in which an individual is an active participant under the plan shall be counted as 1 month. Thus, for example, if A, an individual, became an active participant under a plan on December 31, 1965, and continued to be an active participant under the plan until May 7, 1976, A has 108 (12×9) months of active participation under the plan before January 1, 1974, and A has 29 (12+12+5) months of active participation after December 31, 1973. For special rule in case of aggregation of plans, see paragraph (e)(1)(ii) of this section.

(4) *Employee; employer.* The term "employee" includes an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

(5) *Securities.* The terms "securities" and "securities of the employer corporation" shall have the meanings provided in sections 402(a)(3)(A) and 402(a)(3)(B), respectively.

(e) *Special rules*—(1) *Aggregation.* (i) *Aggregation of trusts and plans.*—(A) For purposes of determining the balance to the credit of an employee, all trusts described in section 401(a) and which are exempt from tax under section 501(a) and which are part of a plan shall be treated as a single trust; all pension plans described in section 401(a) maintained by an employer shall be treated as a single plan; all profit-sharing plans described in section 401(a) maintained by an employer shall be treated as a single plan; and all stock bonus plans described in section 401(a) maintained by an employer shall be treated as a single plan. For purposes of this subdivision (i), an annuity contract shall be considered to be a trust.

(B) Trusts which are not described in section 401(a) or which are not exempt from tax under section 501(a), and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account for purposes of subdivision (i) of this subparagraph.

(ii) *Computation of ordinary income portion.* The ordinary income portion of a distribution from two or more plans (which are treated as a single plan under subdivision (i) of this subparagraph) shall be computed by aggregating all of the amounts which would constitute the ordinary income portion of a lump sum distribution if each plan maintained by the employer were not subject to the application of subdivision (i) of this subparagraph.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). M Corporation maintains a qualified profit-sharing plan and a qualified defined benefit pension plan. A, who has participated in each plan for 5 years and is age 55, separates from the service on December 5, 1975. On December 5, 1975, A receives a distribution of the balance to the credit of his account under the profit-sharing plan. Payment of his pension benefits, however, will not commence until he attains age 65. A is entitled to treat his profit-sharing distribution as a lump sum distribution.

Example (2). Assume the same facts as in example (1) except that instead of a profit-sharing plan, M Corporation maintains a qualified money purchase pension plan. A is not entitled to have the amount received from the money purchase pension plan treated as a lump sum distribution.

Example (3). Assume the same facts as in example (2) except that the trust forming part of the defined benefit pension maintained by M Corporation is not a qualified trust. A is entitled to have the amount received from the money purchase plan treated as a lump sum distribution.

Example (4). N Corporation maintains profit-sharing plan X and profit-sharing plan Y which plans are qualified and are noncontributory. A is a participant in each plan. A has been a participant in the profit-sharing plan X since October 13, 1966 and a participant in profit-sharing plan Y since its inception on May 9, 1968. A, at age 55, separates from the service on December 5, 1975. He receives the balance to his credit from each plan upon separation. He receives $50,000 from profit-sharing plan X and $60,000 from profit-sharing plan Y. The ordinary income portion of his distribution from the N Corporation plans is $25,000 [($50,000×(24/120))+($60,000×(24/96))].

(2) *Community property laws.* (i) Except as provided in paragraph (e)(2)(ii) of this section, the provisions of this section shall be applied without regard to community property laws.

(ii) In applying the provisions of section 402(e)(3), relating to the allowance of a deduction from gross income of the ordinary income portion of a lump sum distribution, community property laws shall not be disregarded. Thus, for example, if A, a married individual subject to the community property laws of a jurisdiction, receives a lump sum distribution of which the ordinary income portion is $10,000, and he and his wife, B, file separate returns for the taxable year, generally, one half of the total taxable amount of the lump sum distribution is includible in A's gross income, and he will be entitled to a deduction under section 402(e)(3) of $5,000. In this case, the other half of the total taxable amount is includible in B's gross income, and she will be entitled to a deduction of $5,000. The entire amount of the lump sum distribution, however, must be taken into account by A in computing the separate tax imposed by section 402(e)(1)(A).

(3) *Minimum period of service.* For purposes of computing the separate tax imposed by section 402(e)(1)(A), no amount distributed or paid to an employee may be treated as a lump sum distribution under section 402(e)(4)(A) and this section unless he has been a participant in the plan for at least 5 full taxable years of such employee (preceding his taxable year in which such amount is distributed or paid). Thus, for

example, if an amount, which would otherwise be a lump sum distribution, is distributed to A, an employee who has completed only 4 of his taxable years of participation in the plan before the first day of the taxable year in which the amount is distributed, A is not entitled to use the provisions of section 402(e) to compute the tax on the ordinary income portion of the amount distributed. If the amount were distributed to A's beneficiary on account of A's death, however, A's beneficiary could treat the distribution as a lump sum distribution under section 402(e) and this section.

(4) *Amounts subject to penalty.* Section 402(e) and this section do not apply to an amount described in section 72 (m)(5)(A)(ii) and § 1.72-17(e)(1)(i) (*b*) to the extent the provisions of section 72(m)(5) apply to such amount.

(5) *Distributions including securities of the employer corporation.* For rules relating to distributions including securities of the employer corporation, see § 1.402(a)-1(b).

(6) *Liability for tax.* (i) Except as provided in subdivision (ii) of this subparagraph the recipient shall be liable for the tax imposed by section 402(e)(1)(A).

(ii)(A) In any case in which the recipient of a lump sum distribution is a trust, if a beneficiary of such trust, is—

(*1*) An employee with respect to the plan under which the distribution is made, or

(*2*) Treated as the owner of such trust for purposes of subpart E of part I of subchapter J of chapter 1 of the Code (relating to grantors and others treated as substantial owners),

then such employee or the owner shall be treated as the sole recipient of the lump sum distribution. For purposes of (*1*) of this subdivision, the term "an employee with respect to the plan under which the distribution is made" means and individual who, immediately before the distribution is made, is a participant in the plan under which the distribution is made.

(B) (*1*) In any case in which a lump sum distribution is made within a taxable year with respect to an individual only to two or more trusts, if a beneficiary of any one of such trusts is not treated as the sole recipient of the distribution by reason of the application of (A) of this subdivision (ii), the separate tax imposed by section 402(e)(1)(A) shall be computed as if the distribution were made to a single recipient consisting of all of such trusts, but the liability for such separate tax shall be allocated among the trusts according to the relative portions of the total taxable amount of the distribution received by each trust.

(*2*) In any case in which a lump sum distribution is made in a succeeding taxable year in a lookback period with respect to a trust described in (*1*) of this subdivision (B), the separate tax imposed by section 402(1)(A) shall be computed as if the amount described in section 402(e)(2)(A), (relating to the amount of tax imposed by section 402(e)(1)(A) paid with respect to other distributions in a lookback period) includes the separate tax determined in (*1*) of this subdivision (B) (without regard to the allocation described therein).

(7) *Change in exempt status of trust.* For principles applicable in making appropriate adjustments if the trust was not exempt for one or more years before the year of distribution, see § 1.402(a)-1(a)(1)(iv).

(f) *Reporting*—(1) *Information required.* An employer who maintains a plan described in section 401(a) or 403(a), under which a distribution or payment which may be treated as a lump sum distribution is made in a taxable year of the recipient beginning after December 31, 1973, shall communicate (or cause to be communicated) in writing, to the recipient on Form 1099 R the following information (where applicable):

(i) The gross amount of such distribution (including the value of any United States retirement plan bonds distributed to or held for the recipient);

(ii) The total taxable amount of such distribution;

(iii) The ordinary income portion and capital gain element of such distribution;

(iv) The net amount contributed by the employee (within the meaning of paragraph (d)(2)(ii) of this section);

(v) The portions of such distribution excludable from the gross income of the recipient under paragraph (c) of § 1.72-16 and paragraph (b) of § 1.402(a)-1;

(vi) The value of any United States retirement plan bonds distributed to or held for the recipient in excess of the net amount contributed by the employee (within the meaning of paragraph (d)(2)(ii) of this section) included in the basis of such bonds;

(vii) The current actuarial value of any annuity contract distributed as part of the balance to the credit of the employee in excess of the net amount contributed by the employee (within the meaning of paragraph (d)(2)(ii) of this section) considered to be an investment in the contract;

(viii) The net unrealized appreciation on any securities of the employer corporation.

(2) *Alternate method of communication.* The obligation of the employer to communicate the information described in subparagraph (1) of this paragraph to the recipient shall be satisfied if the fiduciary of the trust or the payer of such distribution communicates the information to the recipient.

(3) *Taxable year of recipient.* The report required by this paragraph may be prepared, at the option of the employer as if the taxable year of each employee were the calendar year.

(4) *Failure to satisfy requirements.* In the event that the requirements of this paragraph are not satisfied, the information required to be furnished under this paragraph shall be furnished as part of the return required to be filed under section 6058 and the regulations thereunder.

§ 1.402(e)-3 Election to treat an amount as a lump sum distribution.

(a) *In general.* For purposes of sections 402, 403, and this section, an amount which is described in section 402(e)(4)(A) and which is not an annuity contract may be treated as a lump sum distribution under section 402(e)(4)(A) only if the taxpayer elects for the taxable year to have all such amounts received during such year so treated. Not more than one election may be made under this section with respect to an employee after such employee has attained age 59½.

(b) *Taxpayers eligible to make the election.* Individuals, estates, and trusts are the only taxpayers eligible to make the election provided by this section. In the case of a lump sum distribution made with respect to an employee to 2 or more trusts, the election provided by this section shall be made by the employee or by the personal representative of a deceased employee.

(c) *Procedure for making election*—(1) *Time and scope of election.* An election under this section shall be made for each taxable year to which such election is to apply. The election shall be made before the expiration of the period (including extensions thereof) prescribed in section 6511 for making a claim for credit or refund of the assessed tax imposed by chapter 1 of subtitle A of the Code for such taxable year.

(2) *Manner of making election.* An election by the taxpayer with respect to a taxable year shall be made by filing Form 4972 as a part of the taxpayer's income tax return or amended return for the taxable year.

(3) *Revocation of election.* An election made pursuant to this section may be revoked within the time prescribed in subparagraph (1) of this paragraph for making an election, only if there is filed, within such time, an amended income tax return for such taxable year, which includes a statement revoking the election and is accompanied by payment of any tax attributable to the revocation. If an election for a taxable year is revoked, another election may be made for that taxable year under paragraphs (c)(1) and (2) of this section.

(4) *Effect of election on subsequent distribution.* An election made pursuant to this section shall be an election to treat an annuity contract distributed after December 31, 1973, in a lookback period (as defined in § 1.402(e)-2(c)(2)(iii)(F)) beginning after such date as a lump sum distribution in the taxable year of the recipient in which such contract is distributed.

13. Section 1.403(a) is amended by amending paragraph (A)(2)(iii) thereof and by revising the historical note. As amended, these revised provisions read as follows:

§ 1.403(a) Statutory provisions; taxation of employee annuities; qualified annuity plan.

Sec. 403. *Taxation of employee annuities*—(a) *Taxability of beneficiary under a qualified annuity plan* • • •

(2) *Capital gains treatment for certain distributions*—(A) *General rule.* * * *

(iii) A lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient, so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(B) *Cross reference.* For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).

* * * * *

[Sec. 403(a) as amended by sec. 23(b), Technical Amendments Act 1958 (72 Stat. 1622); sec. 4(d), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 825); sec. 232(e)(4), Rev. Act 1964 (78 Stat. 111); sec. 2005(b)(2), Employee Retirement Income Security Act 1974 (88 Stat. 991)]

14. Section 1.403(a)-1(b) (1) and (2) are amended to read as follows:

§ 1.403(a)-1 Taxability of beneficiary under a qualified annuity plan.

* * * * *

(b) The amounts received by or made available to any employee referred to in paragraph (a) of this section under an annuity contract shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities), except that—

(1) For taxable years beginning before January 1, 1970, certain total distributions described in section 403(a)(2) (as in effect for such years) are taxable as long-term capital gains (see § 1.403(a)-2 for rules applicable to such amounts), and

(2) For taxable years beginning after December 31, 1973, a portion of a lump sum distribution (as defined by section 402(e)(4)(A)) is treated as long-term capital gains (see paragraph (d) of § 1.403(a)-2 for rules applicable to such portion and see § 1.402(e)-2 for the computation of the separate tax on the portion of a lump sum distribution not treated as long-term capital gains).

For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to treatment of certain lump sums), as in effect before such date, shall not apply to an amount described in this paragraph. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under section 1301 through 1305 (relating to income averaging).

* * * * *

15. Section 1.403(a)-2(a)(1) and (b) are amended; (c) is revised, (d) and (e) are added to read as follows:

§ 1.403(a)-2 Capital gains treatment for certain distributions.

(a) For taxable years beginning before January 1, 1970, if the total amounts payable with respect to any employee for whom an annuity contract has been purchased by an employer under a plan which—

(1) Is a plan described in section 403(a)(1) and § 1.403(a)-1, and

* * * * *

(b) For taxable years beginning before January 1, 1970—

(1) The term "total amounts" means the balance to the credit of an employee with respect to all annuities under the annuity plan which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service. If an employee commences to receive annuity payments on retirement and then a lump sum payment is made to his widow upon his death, the capital gains treatment applies to the lump sum payment, but it does not apply to amounts received before the time the "total amounts" become payable. However, if the total amount to the credit of the employee at the time of his death or other separation from the service or death after separation from the service is paid or includible in the gross income of the payee within one taxable year of the payee, such amount is entitled to the capital gains treatment notwithstanding that in a later taxable year an additional amount is credited to the employee and paid to the payee.

* * * * *

(c) For taxable years beginning before January 1, 1970, the provisions of this section are not applicable to any amounts paid to a payee to the extent such amounts are attributable to contributions made on behalf of an employee while he was a self-employed individual in the business with respect to which the plan was established. For the taxation of such amounts, see § 1.72-18. For such years for the rules for determining the amount attributable to contributions on behalf of an employee while he was self-employed, see paragraphs (b)(4) and (c)(2) of such section.

(d) For taxable years ending after December 31, 1969, and beginning before January 1, 1974, the portion of the total amounts described in paragraph (b)(1) of this section treated as gain from the sale or exchange of a capital asset held for more than six months is subject to the limitation of section 403(a)(2)(C), as in effect on December 31, 1973.

(e) For taxable years beginning after December 31, 1973—

(1) If a lump sum distribution (as defined in section 402(e)(4)(A) and the regulations thereunder) is received by, or made available to, the recipient under an annuity contract described in subparagraph (2)(i) of this paragraph, the ordinary income portion (as defined in section 402(e)(4)(E) and the regulations thereunder) of such distribution shall be taxable in accordance with the provisions of section 402(e) and the regulations thereunder and the portion of such distribution determined under paragraph (3) of this section shall be treated in accordance with the provisions of paragraph (2) of this section.

(2) If—

(i) An annuity contract is purchased by an employer for an employee under a plan described in section 403(a)(1) and § 1.403(a)-1,

(ii) Such plan requires that refunds of contributions with respect to annuity contracts purchased under the plan be used to reduce subsequent premiums on the contracts under the plan, and

(iii) A lump sum distribution (as defined in section 402(e)(4)(A) and the regulations thereunder) is paid to the recipient,

the amount described in paragraph (e)(3) of this section shall be treated as gain from the sale or exchange of a capital asset held for more than 6 months.

(3) For purposes of paragraph (e)(2) of this section, the portion of a lump sum distribution treated as gain from the sale or exchange of a capital asset held for more than 6 months is an amount equal to the total taxable amount of the lump sum distribution (as defined in section 402(e)(4)(D) and the regulations thereunder) multiplied by a fraction—

(i) The numerator of which is the number of calendar years of active participation (as determined under § 1.402(e)-2(d)(3)(ii)) by the employee in such plan before January 1, 1974, and

(ii) The denominator of which is the number of calendar years of active participation (as determined under § 1.402(e)-2(d)(3)(ii)) by the employee in such plan.

(4) For purposes of this paragraph—

(i) In the case of an employee who is an employee without regard to section 401(c)(1), the determination of whether or not an amount is a lump sum distribution shall be made without regard to the requirements of section 402(e)(4)(B) and § 1.402(e)-3.

(ii) No distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this section.

16. Section 1.405 is amended by deleting "Section 72 (n) and section 402(a)(2)" in subsection (e) and inserting in lieu thereof "Subsection (a)(2) and (e) of section 402" and revising the historical note. These amended and revised provisions read as follows:

§ 1.405 Statutory provisions; qualified bond purchase plans.

Sec. 405. *Qualified bond purchase plans.* * * *

(e) *Capital gains treatment not to apply to bonds distributed by trusts.* Subsections (a)(2) and (e) of section 402 shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such sections, any such bond distributed to any distributee and any such

bond to the credit of any employee shall not be taken into account.

* * * * *

[Sec. 405 as added by sec. 5, Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 826) and as amended by sec. 106(d)(5), Social Security Amendments 1965 (79 Stat. 337); sec. 515(c)(1) Tax Reform Act 1969 (83 Stat. 654); sec. 2005(c)(11) Employee Retirement Income Security Act 1974 (88 Stat. 992)]

Par. 17. Paragraph (4) of § 1.405–3(a) is revised to read as follows:

§ 1.405–3 Taxation of retirement bonds.

(a) *In general.* * * *

(4) The provisions of section 402(a)(2) and (e) are not applicable to a retirement bond. In general, section 402(a)(2) provides for capital gains treatment of a portion of a lump sum distribution as defined in section 402(e)(4)(A) and section 402(e) provides a special 10-year averaging of the ordinary income portion of such a lump sum distribution. The proceeds of a retirement bond received upon redemption will not be entitled to such capital gains treatment or 10-year averaging even though the bond is received as part of, or as the entire, balance to the credit of the employee. Nor will such a bond be taken into consideration in determining the balance to the credit of the employee. Thus, a distribution by a qualified trust may constitute a lump sum distribution for purposes of section 402(a)(2) and (e) even though the trust retains retirement bonds registered in the name of the employee.

18. Section 1.652(b)–1 is amended by deleting "72(n)" and inserting in lieu thereof "402(a)(2)". As amended, § 1.652(b)–1 reads as follows:

§ 1.652(b)–1 Character of amounts.

In determining the gross income of a beneficiary, the amounts includible under § 1.652(a)–1 have the same character in the hands of the beneficiary as in the hands of the trust. For example, to the extent that the amounts specified in § 1.652(a)–1 consist of income exempt from tax under section 103, such amounts are not included in the beneficiary's gross income. Similarly, dividends distributed to a beneficiary retain their original character in the beneficiary's hands for purposes of determining the availability to the beneficiary of the dividends received credit under section 34 (for dividends received on or before December 31, 1964) and the dividend exclusion under section 116. Also, to the extent that the amounts specified in § 1.652(a)–1 consist of "earned income" in the hands of the trust under the provisions of section 1348 such amount shall be treated under section 1348 as "earned income" in the hands of the beneficiary. Similarly, to the extent the amounts specified in § 1.652(a)–1 consist of an amount received as a part of a lump sum distribution from a qualified plan and to which the provisions of section 402(a)(2) would apply in the hands of the trust, such amount shall be treated as subject to such section in the hands of the beneficiary except where such amount is deemed under section 666(a) to have been distributed in a preceding taxable year of the trust and the partial tax described in section 668(a)(2) is determined under section 668(b)(1)(B). The tax treatment of amounts determined under § 1.652(a)–1 depends upon the beneficiary's status with respect to them, not upon the status of the trust. Thus, if a beneficiary is deemed to have received foreign income of a foreign trust, the includibility of such income in his gross income depends upon his taxable status with respect to that income.

19. Section 1.1304 is amended by deleting paragraph (b)(2) and redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively, and revising the historical note. These amended and revised provisions read as follows:

§ 1.1304 Statutory provisions; special rules.

Sec. 1304. *Special rules.* * * *

(b) *Certain provisions inapplicable.* If the taxpayer chooses the benefits of this part for the taxable year, the following provisions shall not apply to him for such year:

(1) Section 3 (relating to optional tax),

(2) Section 911 (relating to earned income from sources without the United States),

(3) Subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States),

(4) Section 1201 (b) (relating to alternative capital gains tax), and

(5) Section 1348 (relating to 50-percent maximum rate on earned income).

* * * * *

[Sec. 1304 as amended by sec. 232 (a), Rev. Act 1964 (78 Stat. 105); secs. 311 (c) and (d), 515(c)(4), 802 (c)(5), and 803(d)(8), Tax Reform Act 1969 (83 Stat. 537, 646, 678, 684); sec. 2005(c)(6) Employee Retirement Income Security Act 1974 (88 Stat. 991)]

20. Paragraph (a) of § 1.1304–2 is amended to read as follows:

§ 1.1304–2 Provisions inapplicable if income averaging is chosen.

(a) *Provisions inapplicable.* If a taxpayer chooses the benefits of income averaging for any taxable year, pursuant to section 1304(a) and § 1.1304–1, the following sections of the Code will not apply for such year: * * *

(2) In taxable years beginning before January 1, 1974, section 72(n)(2) (relating to limitation of tax in case of certain distributions with respect to contributions by self-employed individuals).

* * * * *

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

§ 11.402(e)(4)(B)–1 [Revoked]

21. Section 11.402(e)(4)(B)–1 is revoked.

[FR Doc.75–11365 Filed 4–29–75;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 STATE

Office of the Secretary

DRAFT ENVIRONMENTAL STATEMENT ON PROPOSED CONSTRUCTIONS

Public Information and Comment Meetings

A Draft Environmental Impact Statement (DEIS) concerning the proposed construction of the Washington Technical Institute and the International Center at the former National Bureau of Standards site, Connecticut Avenue and Van Ness Street NW., Washington, D.C., has been prepared by the Department of State, the General Services Administration, and the National Capital Planning Commission. The DEIS was released on April 11, 1975, to all known interested public agencies, individuals and community groups in the review of and comment on the DEIS is invited. An opportunity for such participation will be afforded at a public Informational Meeting, and at a public Comment Meeting, as described below:

INFORMATIONAL MEETING

Date. May 14, 1975.

Time. 7:00 p.m.

Place. A. Mercer Daniels Law Library, Howard University Law School, Dunbarton Campus, 2935 Upton Street NW., Washington, D.C.

Purpose. To provide information, including a description of the projects, and to the extent possible, to provide answers to all relevant questions received by the Coordinator by May 9, 1975.

Instructions: Interested parties are invited to submit written questions to the Coordinator by May 9, 1975. Parties who wish to present oral questions at the Informational Meeting are requested to register with the Coordinator by May 12, 1975. Each such party will be afforded three minutes of speaking time at the Informational Meeting for the purpose of presenting such questions. To the extent possible, all relevant questions received after May 9, 1975, and before May 16, 1975, will be answered at or before the Comment Meeting. Presentation of comments will be reserved for the Comment Meeting.

COMMENT MEETING

Date. May 21, 1975.

Time. 7:00 p.m.

Place. A. Mercer Daniels Law Library, Howard University Law School, Dunbarton Campus, 2935 Upton Street NW., Washington, D.C.

Purpose. To receive comments concerning the proposed projects.

Instructions. The submission of written comments to the Coordinator at any time prior to May 26, 1975, is invited. Interested parties desiring to present oral comments at the Comment Meeting are requested to register with the Coordinator by May 19, 1975. Each party will be afforded five minutes of speaking time at the Comment Meeting. Oral comments may be extended by subsequent written permission prior to May 26, 1975.

Coordinator. All questions, comments, and requests for copies of the DEIS should be addressed to: William C. Lawson, Coordinator—PJF, Interagency Task Force, Room 6029, General Services Administration, 18th & F Streets NW., Washington, D.C. 20405, Telephone: (202) 343-5266.

Locations of copies of DEIS available for public reference. Martin Luther King Library, 901 G Street NW., Washington, D.C.; Cleveland Park Branch Library, Connecticut Avenue & Macomb Street NW., Washington, D.C.; Tenley Friendship Branch Library, Wisconsin Avenue & Albemarle Street NW., Washington, D.C.; Chevy Chase Branch Library, Connecticut Avenue, near McKinley Street NW., Washington, D.C.; General Services Administration, Room 6029, 18th & F Streets NW., Washington, D.C.; National Capital Planning Commission, 1325 G Street, 10th Floor NW., Washington, D.C.

JAMES A. LOVELL,
Technical Liaison-Room 1890 International Center Project Department of State.

[FR Doc.75-11396 Filed 4-29-75;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

FIREARMS

Granting of Relief

Notice is hereby given that pursuant to 18 U.S.C., section 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Clayton, Bob, 809 North Johnson, Corydon, Iowa, convicted on November 19, 1968, in the District Court of the State of Iowa in and for Polk County, Des Moines, Iowa.

D'Albora, Ronald A., 6 Falcon Lane, Levittown, New York, convicted on April 6, 1967, in the United States District Court for the Eastern District of New York.

Davis, Joseph T., Jr., Route 2, Box A-44, Powhatan, Virginia, convicted on February 12, 1968, in the United States District Court, Eastern District, Virginia.

Doyle, James H., 13605 Gratiot Road, Hemlock, Michigan, convicted on or about June 17, 1969, in the 34th Circuit Court, Ogemaw County, Michigan.

Ficaro, Jack J., Jr., 3628 Dumaine, Apt. A, New Orleans, Louisiana, convicted on or about May 4, 1971, in the Superior Court, San Francisco County, San Francisco, California.

Fischer, Rocky Lee, Box 47, Kilgore, Nebraska, convicted on or about June 20, 1973, in the Cherry County District Court, Nebraska.

Fruhwirth, Don R., 4994 Blow Street, St. Louis, Missouri, convicted on October 23, 1970, in the United States District Court, St. Louis, Missouri.

Frye, Richard Blaine, Jr., 3403 30th Street, Kenosha, Wisconsin, convicted on October 1, 1970, in the Circuit Court, Kenosha County, Wisconsin.

Fullerton, Clyde J., Jr., 3731 South Glenstone, Lot #74, Springfield, Missouri, convicted on September 29, 1959, in the Circuit Court of Dallas County, Missouri.

Harris, Earl E., Route 1, East, Box 26D, Scottsburg, Oregon, convicted on April 30, 1965, in the Douglas County Circuit Court, Oregon.

Howell, Dennis Charles, 1613 Lilac Lane, Antioch, California, convicted on December 4, 1969, in the Superior Court of the State of California for the County of Los Angeles; and on December 23, 1969, in the Municipal Court of the Bakersfield Judicial District, County of Kern, California.

Johnson, Raymond R., 1600-Woodmere Avenue, Detroit, Michigan, convicted on April 27, 1955, in the United States District Court for the Eastern District of Tennessee, Chattanooga, Tennessee; and on September 30, 1958, in the Municipal Court, Marion County, Indiana.

Johnson, Warren E., 13721 Steven Road, Burnsville, Minnesota, convicted on November 8, 1971, in the 2nd Judicial Circuit Court, Ramsey County, Minnesota.

Mackalica, James S., R.D. #5, Butler, Pennsylvania, convicted on or about September 11, 1963, in the Criminal Court of Beaver County, Pennsylvania.

Marsh, Norman Lee, 818 West Estes Way, Phoenix, Arizona, convicted on April 2, 1954, in the Superior Court, Orange County, California; and on September 25, 1956, in the Circuit Court, Coos County, Oregon.

Martin, Estes Leon, 22 Charmingdale Drive, Monroe, Louisiana, convicted on January 19, 1953, in the Custer County District Court, Kearney, Nebraska.

Matz, Warren William, 217 North Street, Little Chute, Wisconsin, convicted on March 11, 1971, in the United States District Court, Eastern District of Wisconsin.

May, Steven J., 4601 Fillmore NE., Minneapolis, Minnesota, convicted on October 6, 1972, in the District Court, Tenth Judicial District, Anoka County, Minnesota.

Miller, Donald L., 6301 SE 14th, Lot 67, Des Moines, Iowa, convicted on December 27, 1956, in the District Court of Iowa in and for Warren County.

Mixson, Thomas A., P.O. Box 651, North, South Carolina, convicted on April 25, 1973, in the United States District Court, District of South Carolina.

Rutherford, Gary D., P.O. Box 41, Pengilly, Minnesota, convicted on May 15, 1972, in the District Court, Ninth Judicial District, Itasca County, Minnesota.

Sauer, Dave E., P.O. Box 434, Thornburg, Iowa, convicted on November 14, 1972, in the District Court of Iowa, Keokuk County, Iowa.
Simmons, Arthur Willie, Route 2, Box 163AA, Rolla, Missouri, convicted on November 14, 1972, in Phelps County Circuit Court, Missouri.
Smith, William Ellis, 215 Rumsey, Anaconda, Montana, convicted on September 11, 1970, in the District Court of the Third Judicial District of the State of Montana in and for the County of Deer Lodge.
Stanley, Robert F., River Road, Solon, Maine, convicted on September 13, 1972, in the Superior Court, Somerset County, Maine.
Sutton, Larry Don, 865 Char-Ben Drive, Pevely, Missouri, convicted on November 12, 1965, in the Circuit Court of the City of St. Louis, State of Missouri.
Tisdale, Jack Bruce, Box 267, New Underwood, South Dakota, convicted on October 14, 1968, in the Circuit Court, Eighth Judicial Circuit, Lawrence County, South Dakota.
Wells, Leslie M., 628 Grand Canyon, Reno, Nevada, convicted on or about July 30, 1957, in the Superior Court, Alameda County, California.
White, Jerry L., 5200 S. Washington Road, Saginaw, Michigan, convicted on October 19, 1959, and on October 3, 1961, in the Circuit Court for the County of Bay, Bay City, Michigan.
Woods, Pavan M., Route 1, Box 747, Tenino, Washington, convicted on June 11, 1973, in the Superior Court of the State of Washington in and for the County of Thurston.
Yodice, Peter J., 1402 Castle Hill Avenue, Bronx, New York, convicted on April 8, 1969, in the United States District Court, Southern Judicial District of Florida, Miami, Florida.

Signed at Washington, D.C. this 18th day of April 1975.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.75-11215 Filed 4-29-75;8:45 am]

Customs Service

CASTOR OIL PRODUCTS FROM BRAZIL

Notice of Receipt of Countervailing Duty Petition and Initiation of Investigation

A petition in satisfactory form was received on March 10, 1975, alleging that payments or bestowals, conferred by the Government of Brazil upon the manufacture, production or exportation of hydrogenated castor oil and 12 hydroxystearic acid from Brazil constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended, (19 U.S.C. 1303(a)(4)) the Department of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of that statute within 6 months of the receipt of a petition alleging the payment or bestowal of a bouny or grant and final decision within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than September 10, 1975, as to whether or not the alleged payments or bestowals, conferred by the Government of Brazil upon the manufacture, production, or exportation of the above described merchandise constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than March 10, 1976.

This notice is published pursuant to section 303(a)(3) Tariff Act of 1930, as amended, (19 U.S.C. 1303(a)(3)) and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

VERNON D. ACREE,
Commissioner of Customs.

Approved: April 24, 1975.

[SEAL] DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-11207 Filed 4-29-75;8:45 am]

[T.D. 75-101]

FOREIGN CURRENCIES—CERTIFICATION OF RATES

Rates of Exchange Certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

APRIL 11, 1975.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 75-24 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

France franc:	
March 31, 1975	$0.2373
Norway krone:	
March 31, 1975	$0.2037

[SEAL] R. N. MARRA,
Director, Duty Assessment Division.

[FR Doc.75-11230 Filed 4-29-75;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON TECHNOLOGY BASE STRATEGY

Task Force Meeting; Correction

On April 22, 1975, a task force meeting announcement was published in the FEDERAL REGISTER (40 FR 17763) which incorrectly listed the phone number of the Executive Secretary.

This notice is being published to correct this error.

Persons wishing to attend the open session of this meeting should provide notice, either by mail or phone, by 12 May 1975 to:

Dr. Paul W. Peterson, Executive Secretary, DSB Task Force on Technology Base Strategy, OSD-DD(R&AT), Room 3E114, The Pentagon, Washington, D.C. 20301. Tel. No. (202 697-6379.

MAURICE W. ROCHE,
Director Correspondence and Directives OASD (Comptroller).

APRIL 25, 1975.

[FR Doc.75-11298 Filed 4-29-75;8:45 am]

[Serial No. I-6900]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application, Serial No. I-6900, for withdrawal and reservation of lands was published as FEDERAL REGISTER Document No. 73-13392 on page 742 of the issue for July 3, 1973. The Forest Service has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 2300, such lands will be at 10 a.m. on May 23, 1975 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

BOISE, MERIDIAN, IDAHO

T. 50 N., R. 3 E.,
Sec. 27, Lots 5, 6, 7, N½NE¼SW¼;
Sec. 28, Lot 8.

The area described aggregates 167.5 acres.

VINCENT S. STROBEL,
Chief,
Branch of L&M Operations.

[FR Doc.75-11311 Filed 4-29-75;8:45 am]

[Serial No. I-09518]

IDAHO

Partial Termination of Proposed Withdrawal and Reservation of Lands

APRIL 21, 1975.

Notice of an application, serial number I-09518, for withdrawal and reservation of lands was published in the August 20, 1958 issue of the FEDERAL REGISTER on page 6379 (23 FR 163). The Forest Service has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 2300, such lands will be at 10 a.m. on May 29, 1975 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

BOISE MERIDIAN, IDAHO

T. 61 N., R. 5 W.,
Sec. 14, SW¼SW¼SW¼;
Sec. 15, SE¼SE¼SE¼;
Sec. 22, NE¼NE¼NE¼;
Sec. 23, NW¼NW¼NW¼.

The area described aggregates 40.00 acres.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.75-11212 Filed 4-29-75;8:45 am]

[Int Des 75-10]

TIMBER MANAGEMENT

Extension of Comment Period

APRIL 23, 1975.

The comment period for the draft environmental statement on the Timber Management Program of the Bureau of Land Management has been extended from May 7, 1975, to June 12, 1975. The notice of the availability of the draft environmental statement was published in the FEDERAL REGISTER, Vol. 40, Number 48, page 11367 on March 11, 1975.

CURT BERKLUND,
Director,
Bureau of Land Management.

[FR Doc.75-11213 Filed 4-29-75;8:45 am]

Bureau of Reclamation

ANADROMOUS FISH PASSAGE IMPROVEMENTS—SAVAGE RAPIDS DAM, OREGON

Public Hearings

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for improvements to the Fish Passage Facilities at Savage Rapids Dam, Oregon. This statement (Int Des 75-28 dated April 15, 1975) was made available to the Council on Environmental Quality on April 15, 1975.

The draft environmental statement describes the nature and extent of the environmental impact of the proposed anadromous fish passage improvements at Savage Rapids Dam near Grants Pass, Oregon. The major feature of the proposal will be the construction of a new fishway on the north side of the Rogue River and modification of other related structures.

A public hearing will be held in Grants Pass, Oregon, at the Josephine County Courthouse at 7:30 p.m., on June 3, 1975, to receive views and comments from interested organizations or individuals relating to the environmental impacts of the proposed actions. Oral comments at the hearings will be limited to a period of 10 minutes. Speakers will be encouraged not to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow a speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time reference mentioned in their letter request whenever possible, and any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his name will be called at the end of the scheduled speakers. Requests for scheduled presentation will be accepted up until 5 p.m., on May 30, 1975. Opportunities will be available to request time at the time of the various sessions of the hearings and these requests will be handled on a first-come-first-served basis, following the previously scheduled presentations.

Organizations or individuals desiring to present their statements at the hearings should contact the Regional Director, Attention: Code 160, Bureau of Reclamation, P.O. Box 043, 550 W. Fort Street, Boise, Idaho 83724 or telephone area code (208) 342-2711, extension 2215, and announce their intention to participate.

Written comments from those unable to attend, and from those wishing to supplement their oral presentation at the hearing, should be received by June 17, 1975, so that they can be included in the hearing record.

Dated: April 24, 1975.

G. G. STAMM,
Commissioner,
Bureau of Reclamation.

[FR Doc.75-11302 Filed 4-29-75;8:45 am]

National Park Service

YOSEMITE NATIONAL PARK MASTER PLAN

Notice of Intent

Notice is hereby given that the first phase of the new Master Planning process for Yosemite National Park is continuing with workshops scheduled for the following cities.

Seattle, Washington: June 3, 1 p.m. and 7 p.m., Room 1021, Arcade Plaza Building, 2nd Avenue and Union Street.

Dallas/Ft. Worth, TX: June 4, 1 p.m. and 7 p.m., Assembly Room, Student Union Building, Southern Methodist University, Dallas.

Denver, Colorado: June 5, 1 p.m., National Park Service Rocky Mountain Regional Office, 655 Parfet Avenue, Lakewood, Colorado; and 7 p.m., Room 116, University of Colorado at Denver, 1100 14th Street, Denver.

New York, New York: June 10, 1 p.m. and 7 p.m., Room 207, Graduate Center of the University of New York, 33 West 42nd Street.

Chicago, Illinois: June 10, 1 p.m. and 7 p.m., Auditorium, Devonshire Community Center, 4400 Grove, Skokie, Illinois.

Washington, D.C.: June 12, 1 p.m. and 7 p.m., Department of the Interior, South Annex, 1951 Constitution Ave., NW.

Atlanta, Georgia: June 12, 1 p.m., Room 550, Federal Building, 275 Peachtree Street, NE., Atlanta, Georgia; and 7 p.m., National Park Service Building, 3401 Whipple Avenue, East Point, Georgia.

Each workshop in this series that began in Yosemite Valley on February 5, 1975, has the same agenda, and provides for public involvement and citizen participation in the Yosemite National Park planning process.

Concurrent with these workshops will be a series of consultations between members of the Yosemite Master Planning Team and appropriate Federal, State and Local government officials, organizations, and individuals.

The purpose of these workshops and consultations is to provide the widest possible public involvement, including ideas, suggestions, and comments from individuals and organizations on the concepts and composition of a draft Master Plan for Yosemite National Park prior to the actual drafting of such a plan.

It is the intention of the National Park Service, when the draft Master Plan is completed, to submit it to the public for further review through a series of public meetings for which adequate advance public notice also will be given.

Anyone unable to attend the above workshops, should send their ideas on what should be planned for Yosemite to: Yosemite Master Plan Team, National Park Service, c/o Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123. The telephone number is Area Code 415, 556-5814.

Dated: April 21, 1975.

JOHN H. DAVIS,
Acting Regional Director, Western Region, National Park Service.

[FR Doc.75-11379 Filed 4-29-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

The Organization, Functions, and Delegations of Authority of the Agricultural Stabilization and Conservation Service published at 35 FR 19798, December 30, 1970, and amended by 36 FR 6907, April 10, 1971; 37 FR 624, January 14, 1972; and 37 FR 3845, February 23, 1972, is revised and reissued. Because the changes concern rules of agency organization, procedure, and practice, prior notice, public rulemaking procedure, and effective date requirements are omitted as unnecessary.

I. *General.* The Agricultural Stabilization and Conservation Service (hereinafter referred to as ASCS) was established June 5, 1961, by the Secretary of Agriculture pursuant to the authority vested in him by section 161, Revised Statutes (5 U.S.C. 301), and Reorganization Plan No. 2 of 1953. Pursuant to the assignment of functions by the Secretary (37 FR 28463, as amended) and by the Commodity Credit Corporation in accordance with its bylaws (38 FR 6835), this Service is responsible for the planning, coordinating, and administering of agricultural stabilization and conservation policies and programs which include the following:

A. Acreage allotment and farm marketing quota programs under the Agricultural Adjustment Act of 1938, as amended;

B. Coordinating and preventing duplication of aerial photographic work of the Department, including:

1. Clearing of photography projects,

2. Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books,

3. Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage,

4. Promoting interchange of technical information and techniques to develop lower costs and better quality,

5. Representing the Department on the Interagency Committee on Sales Prices of Aerial Photographic and Satellite Imagery Reproduction and serving as liaison with other governmental agencies on aerial photography but excluding mapping, and

6. Providing a Chairman for the Photography Sales Committee of the Department;

C. The rural environmental programs (except Great Plains program) under Title X of the Agriculture and Consumer Protection Act of 1973 and sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended;

D. The land stabilization, conservation, and erosion program authorized by section 203 of the Appalachian Development Act of 1965, as amended, with assistance from the Soil Conservation Service;

E. The beekeeper indemnity payment program under section 804 of the Agricultural Act of 1970, as amended;

F. The cropland adjustment program under title VI of the Food and Agriculture Act of 1965, as amended;

G. The cropland conversion program under section 16(e) of the Soil Conservation and Domestic Allotment Act, as amended;

H. The dairy indemnity program under Act of August 13, 1968, as amended;

I. Refinancing operations pursuant to section 304 of the Defense Production Act of 1950, as amended; and assigned responsibilities and functions under the Defense Production Act of 1950, as amended; and the Federal Civil Defense Act of 1959, as amended;

J. The emergency conservation program under Public Law 85-58, as amended;

K. Conducting fiscal, accounting, and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority, and in participation with other agencies of the U.S. Government, developing and formulating amendments to credit agreements under Title I, of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter referred to as "Public Law 480"), and the export credit sales program involving the rescheduling of amounts due from foreign countries under such agreements;

L. The feed grain program under section 105 of the Agricultural Act of 1949, as amended;

M. The haybank program pursuant to section 805 of the Agricultural Act of 1970;

N. Serving as the focal point in the Department for consultation on the leasing of Federally owned farmlands to insure consistency with the Government's farm programs to reduce production of price-supported crops in surplus supply; and determining and proclaiming agricultural commodities in surplus supply, pursuant to Presidential memorandum of May 21, 1956;

O. Assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended;

P. The Sugar Act of 1948, as amended;

Q. The International Sugar Agreement;

R. Supervising and directing Agricultural Stabilization and Conservation Service State and county offices, and designating functions to be performed by Agricultural Stabilization and Conservation Service State and county committees;

S. The upland cotton program under section 103 of the Agricultural Act of 1949, as amended, and the extra long staple cotton program under section 101 of the Agricultural Act of 1949, as amended;

T. The water bank program under the Water Bank Act;

U. The wheat program under section 107 of the Agricultural Act of 1949, as amended;

V. Distress and disaster relief programs under section 407 of the Agricultural Act of 1949, as amended, and the Disaster Relief Act of 1970, as amended;

W. The emergency livestock feed assistance program under section 407 of the Agricultural Act of 1949, as amended, and the Act of September 21, 1959, as amended;

X. Determining the quantities of agricultural commodities subject to price support available for export programs, and estimating and announcing the types, quantities, and varieties of food commodities to become available for distribution under clause (3) of section 416, Agricultural Act of 1949, as amended;

Y. Programs to stabilize, support, and protect farm income and prices and to assist in the maintenance of balanced and adequate supplies of agricultural commodities, including programs to sell or otherwise dispose of, and aid in the disposition of such commodities (except as otherwise assigned to the Foreign Agricultural Service, Food and Nutrition Service, and the Agricultural Marketing Service).

Z. Procurement, processing, handling, distribution, disposition, transportation, payment, and related services on surplus removal and supply operations, under section 5 (b), (c), and (d) of the CCC Charter Act, section 416 of the Agricultural Act of 1949, as amended, section 210 of the Agricultural Act of 1956, the Act of August 19, 1958, as amended, and section 709 of the Food and Agriculture Act of 1965, as amended (except as otherwise assigned to the Foreign Agricultural Service and the Agricultural Marketing Service) and assisting the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 23, 1935 and the National School Lunch Act of 1946, as amended.

AA. Commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under title II of Pub. L. 480; payment and related services for the Foreign Agricultural Service with respect to export subsidy and barter operations, operations under title I of Pub. L. 480, and the export credit sales program;

BB. Wool and mohair programs under section 704 of the National Wool Act of 1954, as amended;

CC. Under the authority of section 708 of the National Wool Act of 1954, as amended, conducting producer referendums, withholding funds (for advertising and promotion) from payments made to producers under section 704, and transferring such funds to the person or agency designated by the Assistant Secretary for Marketing and Consumer Affairs;

DD. Carrying out civil defense, defense production, and crisis management programs, plans, and operations as assigned;

EE. Administering energy management activities related to people and organizations served by the Department, and maintaining liaison with other Government agencies in these matters.

FF. Other functions on behalf of CCC as assigned in accordance with CCC bylaws.

The principal office of the ASCS is at Washington, D.C., in the Administration Building of the U.S. Department of Agriculture. It consists of offices and divisions listed in the following paragraph II.

II. *Organization, Agricultural Stabilization and Conservation Service.* A. The following is a listing of the ASCS by reporting lines:

1. Administrator
   a. Associate Administrator.
   b. Executive Assistant.
   c. Deputy Administrator, Programs.
      (1) Cotton, Rice, and Oilseeds Division.
      (2) Emergency Preparedness Division.
      (3) Grain Division.
      (4) Program Operations Division.
      (5) Tobacco and Peanut Division.
      (6) Environmental Quality and Land Use Division.
      (7) Program Appeals Staff.
      (8) Regional Directors.
      (a) State ASC Committees.
      (i) County ASC Committees.
   d. Deputy Administrator, Commodity Operations.
      (1) Commodity Operations Division.
      (2) Sugar Division.
      (3) Prairie Village Commodity Office.
      (4) Minneapolis Commodity Office.
   e. Deputy Administrator, Management.
      (1) Administrative Services Division.
      (2) Budget Division.
      (3) Data Systems Division.
      (4) Fiscal Division.
      (5) Personnel Division.
      (6) Internal Consulting Staff.
   f. Information Division.
   g. Program Evaluation and Appraisal Staff.

III. *Functional responsibilities.* The following are the responsibilities of the organizational units of the Agricultural

Stabilization and Conservation Service (ASCS), listed in accordance with reporting lines.

A. *Administrator.* The Administrator, who is also the Executive Vice President of the Commodity Credit Corporation (CCC), is responsible to the Assistant Secretary, International Affairs and Commodity Programs, for the general direction and supervision of the programs assigned to ASCS.

1. *Associate Administrator.* The Associate Administrator acts for and assists the Administrator in the general direction and supervision of programs assigned to ASCS. The Associate Administrator is also Vice President of the CCC. In the absence of unavailability of the Administrator, the Associate Administrator exercises the powers and performs the duties of the Administrator of ASCS and the Executive Vice President of CCC.

2. *Executive Assistant.* The Executive Assistant to the Administrator participates in the formulation of new or improved Agency policies and programs. He serves as the Administrator's personal representative. He also serves as Secretary of the CCC.

3. *Deputy Administrator, Programs.* The Deputy Administrator, Programs, formulates policies and programs pertaining to price support programs for all commodities except milk and its products; bin storage and farm storage facility programs; the feed grain, wheat, and upland cotton programs; the production adjustment programs for tobacco, extra long staple cotton, peanuts, and rice; the wool and mohair programs; the dairy and beekeeper indemnity programs; programs involving environmental quality and land use; and functions related to defense preparedness and crisis management. He is responsible for the program operations of State and county committees and offices, and provides administrative and program direction to regional directors and assigned divisions, staffs, and offices as set forth below. The Deputy Administrator, Programs, is also Deputy Vice President of the CCC.

a. *Cotton, Rice and Oilseeds Division.* The Cotton, Rice and Oilseeds Division formulates broad policies and programs pertaining to production adjustment, payments, and price support, as applicable, for upland cotton and extra-long staple cotton, cotton products, linters and other fibers, rice, soybeans, flaxseed, dry edible beans, cottonseed, tung nuts, castor beans, oils, oil seed meals, naval stores, foundation planting seeds, and other assigned commodities, and disposal to foreign outlets for naval stores. The Division develops operating policy, regulations, and handbooks for price support and acquisition programs for upland and extra long staple cotton and related products. It develops guides and standards for use in evaluating and appraising policy and program operations; develops program dockets and regulations relating to State and county allotments, quotas and production, yields, and loan and payment rates; develops legislative proposals and carries out assigned defense activities. It also reviews and approves association budgets for naval stores.

b. *Emergency Preparedness Division.* The Emergency Preparedness Division formulates and administers policies, programs and procedures applicable to defense emergency production, control and requirements planning. The Division develops standby emergency agricultural programs for the control and availability of feed, seed fertilizer, and farm equipment. It maintains plans for storage and movement of grains and peanuts, and for use of CCC financial resources under emergency conditions. It provides coordinating services to USDA State and County Emergency Boards; develops program dockets, regulations and instructions, and legislative proposals; carries out crisis management functions such as those related to the energy and fertilizer crises; and provides centralized Department-wide defense services including coordination of the defense data system covering resources under USDA jurisdiction.

c. *Grain Division.* The Grain Division formulates broad policies and programs pertaining to production adjustment, payments, and price support for grain (wheat, corn, grain sorghum, barley, oats, and rye). The Division develops operating policy, regulations, and handbooks for price support loans and purchases for soybeans, flaxseed, rice, dry edible beans, honey, and farm stored loans for peanuts, tobacco, and tung nuts. It develops program as well as operating policy for farm storage facility and mobile dryer loan programs and CCC bin storage operations. It develops guides and standards for use in evaluating and appraising policy and program operations; develops program dockets and regulations for carrying out program policies and objectives; develops legislative proposals; and carries out assigned defense activities.

d. *Program Operations Division.* The Program Operations Division develops operating policies, regulations, and handbooks pertaining to on-farm application of production adjustment and payment programs, as applicable, for feed grain, wheat, upland cotton, extra long staple cotton, rice, tobacco, and peanuts; wool and mohair programs; dairy and beekeeper indemnity programs; and the participation of cooperatives. The Division formulates program as well as operating policy for the wool and mohair programs, the indemnity programs for milk producers and beekeepers; compliance, and other program provisions common to more than one ASCS Division. It develops program regulations and dockets relating to the assigned programs; provides uniform program and policy clarification and interpretation; analyzes and evaluates program operations; recommends changes and revisions of policies; and carries out assigned defense activities.

e. *Tobacco and Peanut Division.* The Tobacco and Peanut Division formulates broad policies and programs pertaining to production adjustment, price support, purchase, commercial warehousing, sale, management, and disposal for tobacco, tobacco products, peanuts, and peanut products, including disposal to foreign outlets. The Division develops operating policy, regulations, and procedures for the acquisition, management, and disposition of commodities carried out through producer associations. It develops program dockets and regulations relating to State and county allotments, quotas, yields, and rates; develops legislative proposals; and carries out assigned defense activities.

f. *Environmental Quality and Land Use Division.* The Environmental Quality and Land Use Division formulates and administers policies, activities, and programs concerning environmental quality, conservation of natural resources, emergency conservation and livestock feed, rural development, cropland adjustment, public access, and long-term land use. The Division develops related regulations and instructions, develops lists of approved practices and rates of payment for cost-sharing and related provisions for the national rural environmental assistance program, national forestry incentive program, regional conservation programs, emergency conservation measures programs, water bank program, and land use programs. It develops policies and procedures for providing assistance in rural areas struck by natural disaster by activating emergency livestock feed and emergency conservation measures programs. The Division provides liaison with other offices of the Department and other agencies in developing and administering rural development activities. It reviews, analyzes, and evaluates program operations of State and county offices, and carries out assigned defense activities.

g. *Program Appeals Staff.* The Program Appeals Staff formulates and administers general operating policies and program procedures in connection with requests for reconsideration and appeals, and participates in policy development in connection with "failure to comply" cases and requests for relief, for all programs at National, State, and county levels. It receives, reviews, and processes producers' appeals from prior determinations, and receives and processes requests for producer relief.

h. *Regional Directors.* The Regional Directors have responsibility within specific geographic areas for the administration of assigned ASCS programs within State and county ASCS offices, and the Caribbean Area Office. The Regional Directors are responsible for supervising and coordinating the activities of the State ASC Committees within the established policies and procedures, and assist in coordinating the program activities of State and county ASCS offices in their respective areas. They make recommendations to the Deputy Administrator, Programs, for appointments to the State ASC Committees and other items pertinent to personnel matters in

their respective areas. The Regional Directors also carry out assigned defense activities.

(1) *State ASC Committees and the Director, ASCS Caribbean Area Office.* State ASC Committees and the Director, Caribbean Area Office recommend agricultural programs applicable to the State or Area. State ASCS Offices participate in the administration, and direct and coordinate the administration by county offices, of agricultural conservation and stabilization, production adjustment, payment, price support, land use, diversion, cropland adjustment, sugar and other assigned programs, as well as assigned defense activities and natural disaster responsibilities. The State ASC Committees and the Director of the ASCS Caribbean Area Office report to the Regional Director having responsibility for the geographic area to which the specific State or Area is assigned.

(a) *County ASC Committees.* County ASC Committees recommend and suggest to the State ASC Committee agricultural programs applicable to the county. County ASCS Offices administer agricultural conservation and stabilization, production adjustment, price support, payment, land use, diversion, cropland adjustment, sugar, and other assigned programs requiring direct dealings with the farmer; and carry out assigned defense activities. The County ASC Committees report to their respective State ASC Committees.

4. *Deputy Administrator, Commodity Operations.* The Deputy Administrator, Commodity Operations, formulates policies and programs pertaining to sugar and related commodities and to price support of milk and its products, and broad program policy pertaining to the procurement, sale, and inventory management of assigned commodities. He is primarily responsible for the administration of programs requiring direct relationships with agri-business. The Deputy Administrator, Commodity Operations, is responsible for field operations to implement functions assigned to the Foreign Agricultural Service in accordance with policies and procedures established by the Foreign Agricultural Service. The Deputy Administrator, Commodity Operations, provides administrative and program direction and supervision to assigned divisions and offices as set forth below. The Deputy Administrator, Commodity Operations, is also Deputy Vice President of the CCC.

a. *Commodity Operations Division.* The Commodity Operations Division formulates broad policies and programs pertaining to price support of milk and its products and broad program policy for procurement and sales of processed commodities, whole grains, rice, soybeans, flaxseed, dry edible beans, cotton, cottonseed, tung oil, castor beans, vegetable oils, oilseed meals, honey, foundation and breeder seeds, and other assigned commodities. The Division develops and recommends policies, programs, contract terms, and procedures for commercial storage, processing, packaging, and transportation of commodities; and prepares contract terms, specifications, and operating instructions for ASCS Commodity Offices to follow in carrying out assigned commodity purchase, sales, and disposition programs. The Division provides technical advice, direction, and coordination in supplying processed commodities for domestic and export donation and related operations. It maintains the Traffic Library of the Department; and carries out assigned defense activities.

b. *Sugar Division.* The Sugar Division formulates broad policies and programs pertaining to administration of the Sugar Act, U.S. participation in or liaison with the International Sugar Organization, and international standards; to production adjustment programs for sugar, sugarcane, sugar beets, molasses, confectionery, and sugar containing products; and to the price support, purchase, and disposal programs for honey. The Division develops operating policy, regulations, and handbooks for production adjustment and direct payment programs for sugar beets and sugarcane. It develops guides and standards for use in evaluating and appraising policy and program operations; develops program regulations and legislative proposals; and carries out assigned defense activities.

c. *Commodity Offices.* There are two ASCS Commodity Offices which report to the Deputy Administrator, Commodity Operations. The commodity offices execute assigned inventory management, acquisition, disposition, and related programs and activities. For assigned programs, the commodity offices direct methods analysis, system design, and automatic data processing programming compatible with overall standards and conventions for ASCS activities. They carry out assigned defense activities. These commodity offices are located at addresses shown in paragraph VI and have program responsibilities for the areas indicated:

(1) *Prairie Village ASCS Commodity Office.* The Prairie Village Commodity Office has nationwide responsibility for grain, rice, soybeans, dry edible beans, cotton, cottonseed and cottonseed products, flaxseed, castor oil, linseed oil, and tung oil.

(a) Branch offices. The Prairie Village Commodity Office maintains branch offices at Chicago, Ill.; Minneapolis, Minn.; Houston, Texas; and Portland, Oregon. These offices carry out assigned responsibilities in connection with the acquisition, transportation, disposition, and management of commodties. The Branch Office Managers report to the Director, Prairie Village Commodity Office.

(2) *Minneapolis ASCS Commodity Office.* The Minneapolis Commodity Office has nationwide responsibility for processed commodities.

5. *Deputy Administrator, Management.* The Deputy Administrator, Management, is primarily responsible for the overall management programs in ASCS and CCC, including automatic data systems, aerial photography, administrative services, budget formulation and administration, fiscal and claims management and systems, operations evaluation and internal consultation, manpower utilization and management improvement, personnel management, organization analysis, and employee development and training programs. The Deputy Administrator, Management, provides administrative and program direction and coordination to assigned divisions, staffs, and offices as set forth below. In addition, the Deputy Administrator, Management, carries out assigned defense activities and is also Deputy Vice President of the CCC.

a. *Administrative Services Division.* The Administrative Services Division develops and administers management programs designed to provide ASCS and other assigned units with support activities and services including directives management and typing service, forms design and management, printing procurement and distribution, internal mail services, procurement, property management, records management and security, communications media management, and aerial photography. The Divisions operates or supervises the operations of administrative services in Washington, D.C., is responsible for the service activities of the Aerial Photography Field Office (which supervises two aerial photography laboratories) and the Administrative Services Field Office, provides technical direction over the administrative services activities of other field offices, and carries out assigned defense activities.

b. *Budget Division.* The Budget Division formulates and administers ASCS and CCC budget plans, policies, presentations and procedures, covering all funds utilized, including administrative expense funds, corporate capital funds, funds appropriated for payment to farmers, funds allocated from other sources, and other funds. The Division coordinates legislative reports, exercises technical direction over budgetary activities of the ASCS field offices, and carries out assigned defense activities.

c. *Data Systems Division.* The Data Systems Division formulates policies and programs for effective data processing, provides technical direction, application and coordination of automatic data processing systems for automation of ASCS programs, and develops agency standards and objectives. The Division directs and provides automatic data processing activities including advanced planning, feasibility, systems and application design, programming, systems implementation, monitoring, evaluation, and impact appraisals. It translates requirements into technical needs relating to ADP equipment capabilities, operating requirements, communications network, and data management handling requirements. The Data Systems Division develops and maintains systems which insure expeditious collection, evaluation, and dissemination of data accurately and uniformly as needed for executive, legislative, and public information use. The Division performs reports management functions and is responsible for the activities of the Data Systems Field Office.

d. *Fiscal Division.* The Fiscal Division formulates and administers fiscal and claims policies for ASCS and CCC; develops, implements, and installs systems, accounts, methods and procedures relating to CCC financing and accounting for programs and program activities financed with ASCS, CCC, and other funds, including administrative funds; analyzes financial and operating data and prepares financial statements; is responsible for the activities of the Accounting Field Office and the Claims Field Office; exercises technical direction over fiscal activities of ASCS offices and fiscal agents, and performs fiscal, claims, and other functions as assigned; and carries out assigned defense activities.

e. *Internal Consulting Staff.* The Internal Consulting Staff formulates policies and programs for effective and timely identification, definition, analysis, and alternate solutions of problems directly related to management and program effectiveness. It provides national leadership and coordination to agency improvement programs for achieving progressive management and uniform operations; develops and maintains work measurement, manpower utilization, cost reduction and management improvement activities; and provides leadership in formulating and developing program training activities.

f. *Personnel Division.* The Personnel Division formulates and administers a personnel management program for ASCS–CCC, including position classification, organizational analysis, recruitment, employment qualifications, performance standards, employee relations, incentive awards, employee development and training, and related personnel services. It provides technical advice, assistance, and coordination in the development and direction of a complete personnel management program for ASCS county office employees; is responsible for the activities of the Personnel Field Office; provides technical direction over personnel management activities of ASCS field offices; and carries out assigned defense activities.

6. *Information Division.* The Information Division formulates and administers a comprehensive information service program including preparation of news releases, background statements, technical and popular publications, annual and special reports, radio and television tapes and scripts; and other information material for authorized dissemination to the public and to the trade concerning ASCS and CCC programs and policies. The Division provides State and county ASCS offices with informational materials, and guidance and training in the use of these materials. The Division cooperates with the Office of Communication and other offices and agencies in the preparation and presentation of information programs and materials. It maintains effective relations with press, radio, television, motion picture, and other information media.

7. *Program Evaluation and Appraisal Staff.* The Program Evaluation and Appraisal Staff formulates recommendations for new or revised Agency program policies, evaluation of the costs and effectiveness of on-going programs, and changes in or new legislation based on studies of economic conditions, program objectives, and the soundness and probable results of proposed policy and program changes.

IV. *Contracting and Claims Officers.* A. *CCC Contracting Officers.* The bylaws of Commodity Credit Corporation (38 FR 6835) and the statement of organization, functions, and delegations of authority for Commodity Credit Corporation (35 FR 14951, as amended), designate certain ASCS officials as CCC contracting officers and authorize them to appoint additional ASCS personnel as CCC contracting officers. The names of such contracting officers and information with respect to their authority may be obtained from the Secretary, Commodity Credit Corporation, Washington, D.C. 20250, or from the Director of the Division or Commodity Office with responsibility for the specified Commodity Credit Corporation activities.

B. *Surplus Removal and Supply Contracts.* In connection with programs and activities for which they are respectively responsible, those persons who are contracting officers of Commodity Credit Corporation and, whether or not they are CCC contracting officers, the executive directors of State ASCS offices, the executive directors of county ASCS offices, and the chairmen of county ASC committees may execute contracts on behalf of the United States Department of Agriculture relating to surplus removal and supply activities under section 32 of the Act of August 24, 1935, as amended, and section 6 of the National School Lunch Act, as amended.

C. *ASCS Contracting Officers.* Subject to any restrictions on redelegation of authority of the Administrator, Deputy Administrators of ASCS may execute contracts relating to the activities of ASCS for which they are respectively responsible and may redelegate such authority. Authority to execute contracts in connection with specific ASCS programs may also be delegated to designated officers in the published regulations governing such programs. Additional ASCS contracting officers may be designated for specific purposes from time to time. The names of such ASCS contracting officers and information with respect to their authority may be obtained from the appropriate Deputy Administrator or from the Director, Administrative Services Division, ASCS.

D. *CCC Claims Officers.* The bylaws of Commodity Credit Corporation and the statement of organization, functions, and delegations of authority for Commodity Credit Corporation designate certain ASCS officials to settle and adjust claims by and against Commodity Credit Corporation, and authorize them to appoint additional ASCS personnel as CCC claims officers. The names of such claims officers and information with respect to their authority may be obtained from the Secretary, Commodity Credit Corporation, Washington, D.C. 20250.

E. *ASCS Claims Officers.* Personnel of ASCS occupying the following positions (including those in an acting capacity), with respect to claims by ASCS arising out of activities under their jurisdiction, other than claims of CCC, are authorized to perform all the duties and to exercise all the authority of the Secretary of Agriculture under the authority of the Secretary of Agriculture under the Federal Claims Collection Act of 1966 (Pub. L. 89–508), the Joint Regulations of the Attorney General and the Comptroller General (4 CFR Parts 101, 102, 103, and 104) and the general delegations of authority by the Secretary (37 FR 28463, as amended), except that the authority to compromise, terminate, or suspend collection action with respect to any claim is limited as follows:

1. All deputy administrators—not more than $20,000, exclusive of interest.

2. All directors of divisions and offices and the Deupty Director, Fiscal Division, who is Treasurer, Commodity Credit Corporation—not more than $20,000, exclusive of interest.

3. All State executive directors—not more than $10,000, exclusive of interest.

4. The Chief, Claims Field Office, who is Assistant Treasurer, Commodity Credit Corporation—not more than $10,000 exclusive of interest.

5. Authorized ASCS claims officers, subject to the monetary limitations prescribed in their respective claims officer designations (not less than $2,500 but not more than $5,000 exclusive of interest).

V. *Delegations of Authority.* A. *Administrator.* The Administrator formulates and administers programs assigned to ASCS under delegated authority from the Secretary of Agriculture (37 FR 23463, as amended). This includes authority to execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by law or deemed by him to be necessary and proper to the discharge of the functions assigned to the ASCS, and take any other actions incident to the discharge of such functions. This authority is exercised under the general direction and supervision of the Secretary and the Assistant Secretary for International Affairs and Commodity Programs, and is subject to the general responsibilities of the Secretary to the President and to the Congress. In no case does any delegation of authority to the Administrator preclude the Secretary, Under Secretary, or the appropriate Assistant Secretary, from exercising any of the powers or functions so delegated.

B. *Members of the Administrator's Immediate Staff.* Subject to any restrictions on redelegations of his authority, the Administrator hereby delegates to the Associate Administrator authority to act for him in his absence or inability to act, including the exercise of all powers and authorities which he himself holds; to the Deputy Administrator, Programs, and to the Deputy Administrator, Commodity Operations, authority to establish and interpret program policies with respect to their assigned functions

and responsibilities; to the Deputy Administrator, Management, authority to establish and interpret management policies; and to the Deputy Administrator, Programs, the Deputy Administrator, Commodity Operations, and the Deputy Administrator, Management, authority to establish and interpret operations policies, institute activities and operations, execute documents, issue instructions and orders, (including instructions implementing the Secretary's regulations governing ASC county and community committees (7 CFR 7)), and perform any other actions necessary to the performance of their assigned functions and responsibilities, as currently or hereafter assigned to them. Except when redelegation is specifically prohibited, this authority includes the power of redelegation. In the absence of the Administrator and the Associate Administrator, the Deputy Administrators shall serve as Acting Administrator in the following order of precedence: Deputy Administrator, Programs; Deputy Administrator, Management; the Deputy Administrator, Commodity Operations. In the absence of the Administrator, Associate Administrator, and all Deputy Administrators, the Executive Assistant to the Administrator shall serve as Acting Administrator.

C. *Directors of Divisions and ASCS Commodity Offices.* Under the general supervision and direction of the Administrator or of the Deputy Administrator who has been specifically assigned responsibility for direction of the programs and activities involved, the directors of all divisions of the ASCS and directors of all ASCS commodity offices are authorized, in connection with performance of their assigned functions and responsibilities, to execute contracts, agreements, and other documents, to perform any other actions necessary thereto, and to settle and adjust CCC claims within limitations established by the Commodity Credit Corporation. All authorities shall be exercised within the confines of administrative and functional areas of jurisdiction and, in the case of ASCS commodity offices, in accordance with commodity assignments or geographic areas of jurisdiction. All authorities and responsibilities relating to Commodity Credit Corporation shall be exercised in accordance with the bylaws of Commodity Credit Corporation. Except when redelegation is specifically prohibited, this authority includes the power of redelegation. This general delegation of authority shall not be construed as waiving any restrictions, limitations, or requirements stated in a specific delegation of authority or imposed in governing policies, rules, regulations, or procedures.

VI. *Availability of Information.* Submittals or requests for information or materials with respect to the programs and functions of this Service may be directed to the following officers of the Agricultural Stabilization and Conservation Service who are responsible for the programs or functions concerned, at the addresses shown below:

A. Washington, D.C. Headquarters. Administrator; Deputy Administrator, Commodity Operations; Deputy Administrator, Programs; Deputy Administrator, Management; Director, Information Division; Director, Program Evaluation and Appraisal Staff; Director, Cotton, Rice, and Oilseeds Division; Director, Grain Division; Director, Sugar Division; Director, Tobacco and Peanut Division; Director, Commodity Operations Division; Director, Program Operations Division; Director, Emergency Preparedness Division; Director, Environmental Quality and Land Use Division; Director, Program Appeals Staff; Director, Administrative Services Division; Director, Budget Division; Director, Data Systems Division; Director, Fiscal Division; Director, Internal Consulting Staff; Director, Personnel Division—Address: Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250.

B. *Field Locations.*

1. Chief, Aerial Photography Field Office, ASCS–USDA, 2511 Parleys Way, Salt Lake City, UT 84109.

2. Chief, Aerial Photography Laboratory, ASCS–USDA, 2505 Parleys Way, Salt Lake City, UT 84109.

3. Chief, Aerial Photography Laboratory, ASCS–USDA, 45 S. French Broad Avenue, Asheville, NC 28801.

4. Director, Prairie Village ASCS Commodity Office, ASCS–USDA, Brymar Office Center, 2400 West 75th Street, Prairie Village, KS 66028.

a. Manager, Chicago Branch Office, Prairie Village ASCS Commodity Office, ASCS–USDA, Room 106, 226 West Jackson Boulevard, Chicago, IL 60604.

b. Manager, Minneapolis Branch Office, Prairie Village ASCS Commodity Office, ASCS–USDA, Room 310, Grain Exchange Building, Minneapolis, MN 55415.

c. Manager, Houston Branch Office, Prairie Village ASCS Commodity Office, ASCS–USDA, 2320 LaBranch Street, Houston, TX 77004.

d. Manager, Portland Branch Office, Prairie Village ASCS Commodity Office, ASCS–USDA, 921 SW. Washington Street, Portland OR 97205.

5. Director, Minneapolis ASCS Commodity Office, ASCS–USDA, 6400 France Avenue South, Minneapolis, MN 55435.

6. Kansas City Field Offices: Chief, Administrative Services Field Office; Chief, Accounting Field Office; Chief, Claims Field Office; Chief, Data Systems Field Office; Chief, Personnel Field Office—Address: ASCS–USDA, 8930 Ward Parkway, Kansas City, MO 64114.

7. State Executive Director, State ASCS Office, at the following addresses:

a. Alabama State ASCS Office, ASCS–USDA, Room 714, 474 South Court Street, Montgomery, AL 36102.

b. Alaska State ASCS Office, ASCS–USDA, Room 209, Tucker-Dale Building, 204 E Fifth Avenue, Anchorage, AK 99501.

c. Arizona State ASCS Office, ASCS–USDA, Room 6016, Federal Building, 230 N. First Avenue, Phoenix, AZ 85025.

d. Arkansas State ASCS Office, ASCS–USDA, Room 5415, New Federal Building, 700 W. Capitol Street, Little Rock, AR 72203.

e. California State ASCS Office, ASCS–USDA, 2020 Milvia Street, Berkeley, CA 94704.

f. Colorado State ASCS Office, ASCS–USDA, Room 219, Building A, 2490 W. 26th Avenue, Denver, CO 80211.

g. Connecticut State ASCS Office, ASCS–USDA, Room 307–B, Post Office Building, 135 High Street, Hartford, CT 06101.

h. Delaware State ASCS Office, ASCS–USDA, Suite 002, Chapel North Building, 62 North Chapel Street, Newark, DE 19711.

i. Florida State ASCS Office, ASCS–USDA, Federal Building, 401 S.E. First Avenue, Gainesville, FL 32602.

j. Georgia State ASCS Office, ASCS–USDA, Federal Building, 355 East Hancock Avenue, Athens, GA 30601.

k. Hawaii State ASCS Office, ASCS–USDA, Room 417, 1833 Kalakaua Avenue, Honolulu, HI 96815.

l. Idaho State ASCS Office, ASCS–USDA, U.S. Post Office and Courthouse, 304 N. 8th Street, Boise, ID 83702.

m. Illinois State ASCS Office, ASCS–USDA, Room 232, Federal Building and U.S. Courthouse, Springfield, IL 62701.

n. Indiana State ASCS Office, ASCS–USDA, Suite 1600, 5610 Crawfordsville Road, Indianapolis, IN 46224.

o. Iowa State ASCS Office, ASCS–USDA, Room 937, Federal Building, 210 Walnut Street, Des Moines, IA 50309.

p. Kansas State ASCS Office, ASCS–USDA, 2601 Anderson Avenue, Manhatten, KS 66502.

q. Kentucky State ASCS Office, ASCS–USDA, Imperial Towers Office Building, 333 Waller Avenue, Lexington, KY 40504.

r. Louisiana State ASCS Office, ASCS–USDA, 3737 Government Street, Alexandria, LA 71301.

s. Maine State ASCS Office, ASCS–USDA, USDA Office Building, University of Maine, Orono, ME 04473.

t. Maryland State ASCS Office, ASCS–USDA, Room 420, Hartwick Building, 4321 Hartwick Road, College Park, MD 20740.

u. Massachusetts State ASCS Office, ASCS–USDA, 29 Cottage Street, Amherst, MA 01002.

v. Michigan State ASCS Office, ASCS–USDA, Room 116, 1405 S. Harrison Road, East Lansing, MI 48823.

w. Minnesota State ASCS Office, ASCS–USDA, Room 230, Federal Building and U.S. Courthouse, 316 Robert Street, St. Paul, MN 55101.

x. Mississippi State ASCS Office, ASCS–USDA, 408 Milner Building, 210 S. Lamar Street, Jackson, MS 39205.

y. Missouri State ASCS Office, I.O.O.F. Building, 10th and Walnut Streets, Columbia, MO 65201.

z. Montana State ASCS Office, ASCS–USDA, U.S. Post Office and Federal Building, Bozeman, MT 59715.

aa. Nebraska State ASCS Office, ASCS–USDA, 5601 O Street, Lincoln, NE 68501.

bb. Nevada State ASCS Office, ASCS–USDA, Room 222, U.S. Post Office Building, S. Va. & Mill Streets, Reno, NV 89504.

cc. New Hampshire State ASCS Office, ASCS–USDA, Room 334, 55 Pleasant Street, Concord, NH 03301.

dd. New Jersey State ASCS Office, ASCS–USDA, 1370 Hamilton Street, Somerset, NJ 08873.

ee. New Mexico State ASCS Office, ASCS–USDA, Room 4403, Federal Building, 517 Gold Avenue, SW., Albuquerque, NM 87103.

ff. New York State ASCS Office, ASCS–USDA, 416 Midtown Plaza, 700 E. Water Street, Syracuse, NY 13210.

gg. North Carolina State ASCS Office, ASCS–USDA, Room 656, Federal Building, 310 New Bern Avenue, Raleigh, NC 27601.

hh. North Dakota State ASCS Office, ASCS–USDA, 657 Second Avenue, N., Fargo, ND 58102.

ii. Ohio State ASCS Office, ASCS–USDA, Room 116, Old Federal Building, Columbus, OH 43215.

jj. Oklahoma State ASCS Office, ASCS–USDA, Agricultural Center Office Building, Stillwater, OK 74074.

kk. Oregon State ASCS Office, ASCS–USDA, 1218 S.W. Washington Street, Portland, OR 97205.

ll. Pennsylvania State ASCS Office, ASCS–USDA, Federal Building and U.S. Courthouse, 228 Walnut Street, Harrisburg, PA 17108.

mm. Rhode Island State ASCS Office, ASCS–USDA, 22 Quaker Lane, West Warwick, RI 02893.

nn. South Carolina State ASCS Office, ASCS–USDA, 7th Floor, Federal Office Building, 901 Sumter Street, Columbia, SC 29202.

oo. South Dakota State ASCS Office, ASCS–USDA, 239 Wisconsin Avenue, SW., Huron, SD 57350.

pp. Tennessee State ASCS Office, ASCS–USDA, Room 579, U.S. Courthouse, Nashville, TN 37203.

qq. Texas State ASCS Office, ASCS–USDA, USDA Building, College Station, TX 77840.

rr. Utah State ASCS Office, ASCS–USDA, Room 4239, Federal Building, 125 S. State Street, Salt Lake City, UT 84138.

ss. Vermont State ASCS Office, ASCS–USDA, Room 396, Grassmount Building, 411 Main Street, Burlington, VT 05401.

tt. Virginia State ASCS Office, ASCS–USDA, Federal Building, 400 N. 8th Street, Richmond, VA 23240.

uu. Washington State ASCS Office, ASCS–USDA, Room 391, U.S. Courthouse, 920 W. Riverside, Spokane, WA 99201.

vv. West Virginia State ASCS Office, ASCS–USDA, New Federal Building, 75 High Street, Morgantown, WV 26505.

ww. Wisconsin State ASCS Office, ASCS–USDA, 4601 Hammersley Road, Madison, WI 53711.

xx. Wyoming State ASCS Office, ASCS–USDA, 100 East B. Street, Casper, WY 82602.

7. Director, Caribbean ASCS Area Office, ASCS–USDA, Stop 20, Segarra Building, 1409 Ponce De Leon Avenue, Santurce, San Juan, PR 00910.

8. County office directors are in charge of the operations of county ASCS offices. There are approximately 2,700 county ASCS offices in the United States. The address of any county ASCS office may be obtained from the appropriate State ASCS Office.

VII. *Prior authorization and delegations.* The Statement of Organization, Functions, and Delegations of Authority of Agricultural Stabilization and Conservation Service, published December 30, 1970 (35 FR 19798) as amended, is hereby superseded. All subdelegations of authority relating to any function covered by such superseded statement or by this statement shall remain in effect except as they are inconsistent herewith or are hereafter amended or revoked. Nothing herein shall affect the validity of any action heretofore taken under previous delegations or subdelegations of authority or assignment of functions.

Effective date: April 30, 1975.

Signed at Washington, D.C. on April 18, 1975.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

Approved: April 24, 1975.

EARL L. BUTZ,
Secretary of Agriculture.

[FR Doc.75–11237 Filed 4–29–75;8:45 am]

Animal and Plant Health Inspection Service

PROPOSED FLEMING KEY ANIMAL IMPORT CENTER

Methods and Procedures for Issuance of Import Permits for Animals To Be Imported; Request for Comments

In order to assure fairness and equality to all parties interested in importing animals into the United States through the proposed Fleming Key Animal Import Center at Fleming Key, Florida, the Animal and Plant Health Inspection Service hereby solicits comments and suggestions from the general public on methods and procedures to be used in the issuance of import permits.

Statement of considerations. Section 1 of the Act of May 6, 1970, (Pub. L. 91–239, 84 Stat. 202; (21 U.S.C. 135)), provides, among other things, that the Secretary of Agriculture may establish and maintain a maximum security international animal quarantine station within the territory of the United States, into which animals may be brought from any country, including, but not limited to, a country where rinderpest and foot-and-mouth disease has been determined to exist, and be subsequently moved into other parts of the United States in accordance with such conditions as the Secretary shall determine are adequate to prevent the introduction and dissemination of animal diseases into or within the United States.

The design and planning for such a facility at Fleming Key, Florida is in progress and completion of this facility is expected by December 1977.

Because of the limited space that will be available at the Fleming Key Animal Import Center, the number of applications for permits for animals, intended for importation through this Center, is expected to exceed the space available for the forseeable future. Therefore, the Department is seeking to develop a fair and equitable method, to be used in issuing these permits, that will maximize utilization of the available space without discrimination to anyone.

Interested persons are requested to submit written comments, data, views, and other information relating to the methods and procedures which the Department should use to issue permits for animals to be imported into the United States through the proposed Fleming Key Animal Import Center and which will assure fairness and equality to all importers requesting such permits.

Comments and other material submitted pursuant to this notice should be filed with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, Room 821–A, Federal Building, U.S. Department of Agriculture, Hyattsville, Maryland 20782, on or before June 1, 1975. Such comments and other material submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

All submissions made pursuant to this notice will be made available for public inspection at Room 821–A, Federal Building, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

J. M. HEJL,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.75–11236 Filed 4–29–75;8:45 am]

Farmers Home Administration

[Notice of Designation No. A193]

ILLINOIS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in the following counties in Illinois:

Fayette
Lake

The Secretary has found that this need exists as a result of a natural disaster consisting of excessive rainfall with flooding from May 1 to July 10, 1974, and intermittent hailstorms and windstorms in mid-June 1974 in Fayette County and excessive rainfall from May 1 to June 30, 1974, and frost September 22, 1974, in Lake County.

Therefore, the Secretary has designated these areas as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93–237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Daniel Walker that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 16, 1975, for physical losses and January 19, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 23rd day of April, 1975.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.75–11326 Filed 4–29–75;8:45 am]

[Notice of Designation No. A202]

ILLINOIS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in Kankakee County, Illinois, as a result of a natural disaster consisting of excessive rainfall and flooding from May 17 to June 30, 1974, and an early frost on September 22, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Daniel Walker that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 20, 1975, for physical losses and January 22, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11322 Filed 4-29-75;8:45 am]

[Notice of Designation No. A147, Amdt. 1]

IOWA

Designation of Emergency Area

Notice of an emergency loan area designation for Iowa dated February 21, 1975 (40 FR 8237) is hereby amended to correct the dates of the natural disasters in Chickasaw County. The correct dates are May 5 through June 23 for excessive rainfall and July 6 through July 30, 1974, for drought. September 22, 1974, is the correct date for killing frost.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11320 Filed 4-29-75;8:45 am]

[Notice of Designation No. A190]

IOWA

Designation of Emergency Area

The Secretary of Agriculture has found that a general need for agricultural credit exists in Washington County, Iowa, as a result of a natural disaster consisting of excessive rainfall and flooding May 15 to June 21, 1974, and hailstorms June 20 and August 12, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Robert D. Ray that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 16, 1975, for physical losses and January 19, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11321 Filed 4-29-75;8:45 am]

[Notice of Designation No. A192]

KANSAS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in the following counties in Kansas:

Elk
Republic

The Secretary has found that this need exists as a result of a natural disaster consisting of drought June 8 to August 6, 1974, in Elk County and drought June 1 to November 1, 1974, and a killing frost September 2, 1974, in Republic County.

Therefore, the Secretary has designated these areas as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendations of former Governor Robert Docking and Governor Robert F. Bennett that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 16, 1975, for physical losses and January 19, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 23rd day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11327 Filed 4-29-75;8:45 am]

[Notice of Designation No. A199]

KANSAS

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in Miami County, Kansas, as a result of a natural disaster consisting of drought June 10 to August 14, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Robert F. Bennett that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 20, 1975, for physical losses and January 22, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11323 Filed 4-29-75;8:45 am]

[Notice of Designation No. A201]

MICHIGAN

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in Kent County, Michigan, as a result of a natural disaster consisting of excessive rainfall and cool weather May 5 to June 21, 1974, drought July 5 to August 10, 1974, and an early frost September 23, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor William G. Milliken that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 20, 1975, for physical losses and January 22, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11324 Filed 4-29-75;8:45 am]

[Notice of Designation No. A198]

MINNESOTA

Designation of Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in Carlton County, Minnesota, as a result of a natural disaster consisting of excessive rainfall May 1 to June 15, 1974, drought July 1 to August 15, 1974, and killing frosts September 1, 2 and 3, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Wendell R. Anderson that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 20, 1975, for physical losses and January 22, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 24th day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11325 Filed 4-29-75;8:45 am]

[Notice of Designation No. A083, Amdt. 2]

MISSOURI

Designation of Emergency Area

The Secretary of Agriculture has found that an additional general need for agricultural credit exists in Livingston County, Missouri, as a result of a natural disaster consisting of frost on October 1 and 2, 1974.

Therefore, the Secretary has designated this area as eligible for Emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Christopher S. Bond that such designation be made.

Applications for Emergency loans must be received by this Department no later than June 16, 1975, for physical losses and January 19, 1976, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 23rd day of April, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-11328 Filed 4-29-75;8:45 am]

Forest Service

MOOSE CREEK BASIN PLANNING UNIT

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Moose Creek Basin Planning Unit, Salmon National Forest, Idaho. The Forest Service report number is USDA-FS-DES (Adm) R4-75-17.

A draft environmental statement has been prepared on the proposed land use plan for the Moose Creek Basin Planning Unit in the Salmon National Forest, Lemhi County, Idaho. Approximately 74,100 acres are involved and have been divided into four management areas. The plan sets for the allocation of land to various uses and activities; establishes objectives; and documents management direction, decisions, and coordination.

This draft environmental statement was transmitted to CEQ on April 23, 1975.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave. SW.
Washington, D.C. 20250

Regional Planning Office
USDA, Forest Service
Federal Building, Room 4403
324-25th Street
Ogden, Utah 84401

Forest Supervisor
Salmon National Forest
Forest Service Building
P.O. Box 729
Salmon, Idaho 83467

District Forest Ranger
North Fork Ranger District
North Fork, Idaho 83466

District Forest Ranger
Salmon Ranger District
Salmon, Idaho 83467

A limited number of single copies are available upon request to Forest Supervisor John L. Emerson, Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor John L. Emerson, Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467, in order to be considered in the preparation of the final environmental statement.

Dated: April 23, 1975.

P. M. REES,
Regional Planner.

[FR Doc.75-11309 Filed 4-29-75;8:45 am]

ROUTT NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Routt National Forest Grazing Advisory Board will hold their annual meeting at 10 a.m., Thursday, May 22, 1975 at the Yampa Valley Electric Association building, Steamboat Springs, Colorado.

The purpose of the meeting is to conduct annual business, discuss local livestock and industry's anticipated need for national forest forage in the future, and consider pending actions effecting grazing permits and grazing allotments on the Routt National Forest.

The meeting will be open to the public. Persons who wish to attend should notify Sam Haslem at the Routt County Extension office, 879-0825. Written statements may be filed with the Board after the meeting. Oral statements and pertinent questions will be solicited at the conclusion of the business meeting.

Dated April 21, 1975.

N. V. MILANOWSKI,
Forest Supervisor.

[FR Doc.75-11310 Filed 4-29-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

INDIANA UNIVERSITY-PURDUE UNIVERSITY, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before May 19, 1975.

Amended regulations issued under cited Act, as published in the March 18,

1975 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 75-00450-33-46070. Applicant: Indiana University-Purdue University at Indianapolis, Department of Pathology, Medical Sciences Building, Indianapolis, Indiana 46202. Article: Scanning Electron Microscope, Model PSEM 500. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used in a number of correlative research projects in the general areas of surgical pathology (more specially in applied differential diagnosis of tumors of uncertain histogenesis), in pediatric pathology (in the study of a variety of congential and acquired pulmonary lesions as well as other congenital diseases) and in cytopathology (to study the three dimensional morphology of exfoliated cancer cells from female genital tract mucosa, from body fluids and from cell aspirates obtained by needle biopsy technique and attempt to develop differential diagnostic criteria). Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00451-75-27000. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87544. Article: Streak Camera System, ICC 512. Manufacturer: Electro-Photonic Ltd., United Kingdom. Intended use of article: The article is intended to be used as part of a laser fusion research project to measure extremely short laser pulse lengths. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00452-33-90000. Applicant: Mayo Foundation, 200 First Street, Southwest, Rochester, Minnesota 55901. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used to conduct research to determine the efficacy of the article in the diagnosis of the intracranial lesions. A study will also be conducted comparing transverse axial tomograms of stroke patients with the localization obtained by clinical neurological examinations and scintillation scans, and with autopsy findings in fatal cases. In addition, the article will be used in a program for computerized roentgenologic diagnostic methods in the detection of cancer and for studies of patients with multiple sclerosis. The article will also be used as an essential part of the Neuroradiological phase of a diagnostic roentgenology residency training program in which each resident receives training in neuroradiological technique including use of the article. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00453-33-46040. Applicant: Cornell University, Biochemistry, Molecular and Cell Biology, Wing Hall, Ithaca, New York 14353. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used in studies of molecular structures of virus, proteins, nucleic acids and other cell components for further understanding of the life process at the molecular level. The article will also be used in a cell biology course to familiarize students with contemporary research practices in cell biology. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00454-33-9000. Applicant: Madison General Hospital, 202 South Park Street, Madison, Wisconsin 53715. Article: EMI Scanner System with Diagnostic Display Console. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used in the promotion and education of area physicians concerning the availability and capabilities of the CAT system and evaluate the effectiveness of the system and the extent of its utilization by physicians to ensure effective planning for future units that might be needed takes place. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00455-01-77095. Applicant: State University of New York, Stony Brook, Chemistry Department, Stony Brook, L.I., N.Y. 11794. Article: System 4300 Photon Correlation Spectrometer with Accessories. Manufacturer: Precision Devices and Systems Ltd., United Kingdom. Intended use of article: The article is intended for the study of liquids and liquid mixtures ranging from high temperature liquid crystals to compressed gases. Light scattering from these liquids will be studied for the following purposes:

(1) To measure density and composition fluctuations in the liquids and to determine the dynamics of these fluctuations, and

(2) To measure chemical reactions in polymer and liquid systems. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00456-33-02300. Applicant: Hahnemann Medical College and Hospital, Department of Physiology & Biophysics, 235 North Fifteenth Street, Philadelphia, PA 19102. Article: Rhesus Primate Chairs. Manufacturer: University of Toronto, Canada. Intended use of article: The articles will be used in the research project "Stress Hypertension in Primates" to restrain animals during the part of the project related to the study of stress and noxious sound. Application received by Commissioner of Customs: March 27, 1975.

Docket number: 75-00457-33-46500. Applicant: Millard Fillmore Hospital, 3 Gates Circle, Buffalo, New York 14209. Article: Ultramicrotoime, Model Om U3. Manufacturer: C. Reichert Optische Werke, Austria. Intended use of article: The article is intended to be used in research involving the correlation of morphologic findings in renal biopsy specimens with appropriate clinical information. Similar clinicopathologic correlations in the field of neuromuscular disease; specifically muscular dystrophy, polymyositis and congenital myopathies will be conducted. Other research will be performed concerning the ultrastructure of the lung, bone, liver, kidney, spleen, bone marrow, adrenal glands, thyroid gland, soft tissues, blood vessels and fat. All of these research projects are integrated with a residency training program in which resident pathologists are instructed in all of the methodologies involved in electron microscopy including the preparation, embedding, sectioning, and operation of the electron microscope. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00458-33-46040. Applicant: DHEW, PHS, NIH, National Cancer Institute, Laboratory of Molecular Biology, 9000 Rockville Pike, Bethesda, Maryland 20014. ARTICLE: Electron Microscope, Model HU-12A. Manufacturer: Hitachi, Japan. Intended use of article: The article is intended to be used to study the ultrastructural morphologic nature of malignant transformation in cultured cells and the effects of cyclic nucleotides and other treatments on these cells. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00460-00-46500. Applicant: U.S. Army Institute of Dental Research, Walter Reed Medical Center, Washington, D.C. 20012. ARTICLE: Cryokit, Model 14300-1. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in the preparation of histochemical specimens for elemental analysis using energy-dispersion X-ray analysis in transmission electron microscopy. The tissues are of dental soft and hard specimens in areas of bone implantation, bone repair, dentin formation, endodontic healing and corrosion studies in dental research. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00461-35-46500. Applicant: U.S. Army Institute of Dental Research, Walter Reed Army Medical Center, Washington, D.C. 20012. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section materials of an extremely variable range of density and hardness in investigations of all types of oral surgical implant materials such as ceramic, collagen, metal, and polymers of organic material that are embedded in soft tissue, teeth, and bone. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00462-33-46500. Applicant: University of Hawaii School of Medicine, American Leprosy Missions Leprosy Atelier, Dept. of Pathology, 3675 Kilaueau Avenue, Honolulu, Hawaii 96816. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for investigations of human skin and nerves from leprosy patients together with occasional other human tissue, together

with a variety of experimental animal leprosy tissue including tissue from the armadillo. These tissues are to be studied morphologically, but most particularly so in relation to human and experimental animal cell interrelationship with human and murine leprosy bacilli especially on a cytochemical and cytoenzymologic basis in a search for understanding of factors in host resistance or susceptibility to these infections. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00463-33-46500. Applicant: Veterans Administration Hospital, Research Service 151, Gainesville, Florida 32602. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the ultrastructural study of mammalian tissue, isolated cellular organelles, tissue culture and single cell cultures. Experiments to be conducted will include ultrastructural studies on cellular injury in the inner cortex of the rat kidney resulting from renal ischemia, injury to the ureter, the experimental manipulation of tissue environment and the results of injury caused by this manipulation on isolated nuclei, mitrochondria and brush border membrane. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00464-33-46500. Applicant: City of Hope Medical Center, Department of Anatomic Pathology, 1500 E. Duarte Rd., Duarte, California 91010. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological materials, mainly human tissues derived from surgical or autopsy procedures. Tissues will be studied to identify cell histogenesis, and to aid diagnosis of human pathology. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00465-33-46500. Applicant: Massachusetts General Hospital, Boston, Massachusetts 02114. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for biomedical research. The materials to be studied are animal and human tissues, cells, and cell organelles as well as similar components of animal and human cells in culture systems. The article will also be used for advanced training in research for post doctoral fellows. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00466-33-46040. Applicant: South Dakota State University, Electron Microscope Laboratory, Vet Sci 113, Brookings, South Dakota 57006. Article: Electron Microscope, Model HU-12. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for varied research projects which include:

(1) Identification of bovine and porcine viruses using negative staining as well as thin sectioning procedures.

(2) Identification and characterization of lethal phenotypes in A-y- and t-12-homozygous mouse lethals.

(3) Identification and description of those physical entities responsible for morphogenetic cell movements or cellular motility in vertebrate embryos.

(4) Examination of mitochondrial membranes in barley crown tissue.

(5) Investigations dealing more specifically with physical rather than strictly biological phenomena.

The article is also intended to be used in the courses Bio 507, 607, Principles and Techniques in Electron Microscopy and Bio 493 (Sec 12) Special Topics in Electron Microscopy to provide a good working knowledge of the discipline of electron microscopy and proficiency in its use. Application received by Commissioner of Customs: March 31, 1975.

Docket number: 75-00467-33-46040. Applicant: University of Minnesota, School of Medicine, Dept. of Anatomy, 262 Jackson Hall, Minneapolis, Minnesota 55455. Article: Electron Microscope, Model EM 201C. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the following experiments related to basic cellular phenomena:

(1) Examination of animal tissues and cells after challenge with chemical stimuli and/or modification of their physiological environment.

(2) Quantitative assessment of changes in cellular components by using linear scanning and other morphometric techniques.

(3) Investigation of the distribution of antigens with tissues and cells using the unlabeled antibody method on ultrathin sections for electron microscopy.

(4) Correlation of ultrastructural alterations in the arrangement and distribution of cellular membranes, organelles and/or antigenic components with biochemical observations, physiological observations, and quantitative changes in cellular morphology observed at the light microscope level.

The article will also be used in courses in biological electron microscopy to teach undergraduate medical students, postdoctoral fellows, graduate students, and faculty electron microscopy and associated techniques. Application received by Commissioner of Customs: April 7, 1975.

Docket number: 75-00468-56-17500. Applicant: North Carolina State University, Room 130, Withers Building, Raleigh, North Carolina 27607. Article: Four Recording Current Meters, Model 4. Manufacturer: Ivar Aanderaa, Norway. Intended use of article: The article is intended to be used for oceanographic measurements to provide detailed determination of current vectors, density gradients, and frequency spectra of water masses thus enabling the development of physical models and establishing the circulation and distribution of physical and chemical properties. Application received by Commissioner of Customs: April 7, 1975.

Docket Number: 75-00469-33-90000. Applicant: Pennsylvania Hospital, Eighth and Spruce Streets, Philadelphia, Pa. 19107. Article. EMI Scanner with Magnetic Tape Storage System and Diagnostic Display Console. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used in research in cerebral blood flow and metabolism, specifically the effects of ischemia and brain swelling on regional brain metabolism. The studies, though principally for experimental animals, are applicable to humans. Certain aspects of the diagnostic tests which have no untoward side effects are applied to humans with severe forms of stroke and those individuals recovering from brain surgery. The article will also be used in the study of chemotherapy of brain tumors, which will include periodic evaluation of patients during treatment via serial EMI scanning. Application received by Commissioner of Customs: April 7, 1975.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials).

A. H. STUART,
Director,
Special Import Programs Division.

[FR Doc.75-11227 Filed 4-29-75;8:45 am]

NATIONAL INDUSTRIAL ENERGY CONSERVATION COUNCIL

Postponed Meeting

On April 3, 1975, a notice appeared in the FEDERAL REGISTER (40 FR 14960) announcing a meeting of the National Industrial Energy Conservation Council for May 7, 1975, in Room 4830, Main Commerce Building, 14th and Constitution Avenue, Washington, D.C. 20230.

This advisory committee public meeting has been postponed to a later date in May which will be announced as soon as possible in the FEDERAL REGISTER.

HERBERT K. SCHMITZ,
Executive Director, National Industrial Energy Conservation Council.

[FR Doc.75-11221 Filed 4-29-75;8:45 am]

Maritime Administration

TANKER CONSTRUCTION PROGRAM

Change in Segregated Ballast Capacity; Environmental Impact Statement

Notice of determination that a change in segregated ballast capacity of a vessel described in the Maritime Administration's environmental impact statement does not affect that vessel's impact on the environment so as to remove it from the coverage of the EIS.

An environmental impact statement entitled, Maritime Administration Tanker Construction Program, N.T.I.S. Report No. EIS730725-F, was published on May 30, 1973. The statement concerns the impact of federal assistance to aid in the construction in the United States of

a fleet of oil-carrying vessels during the decade of the 1970's. Vessel classes included range from approximately 35,000 DWT to 400,000 DWT.

On March 12, 1975, the Maritime Subsidy Board (Board) granted certain approvals to a time charter of MA Hull No. 299, a San Clemente Class Tanker presently being built at the National Steel and Shipbuilding Company, San Diego, California. The applicant, Worth Oil Transport Company, was denied permission to carry oil cargo in the No. 3 wing tanks until the Board had considered the consequences of such carriage, after final action thereon had been taken by the Maritime Administration under the National Environmental Policy Act of 1969.

The Maritime Administration has determined that the vessel under consideration was adequately described in the subject Environmental Impact Statement; that the proposed change in segregated ballast capacity, if accomplished, does not affect the impact of that vessel upon the environment so as to remove it from the coverage of the statement, and that the changed vessel is virtually and legally the same vessel as described therein. As a consequence the Board has found that no supplement to the impact statement mentioned herein, nor any new impact statement need be prepared with respect to this vessel. The proposed action by the Maritime Subsidy Board is to:

Grant permission to the applicant, Worth Oil Transport Company, to carry oil cargo in the No. 3 wing tanks (port and starboard) as contemplated in their time charter of MA Hull No. 299, NASSCO Hull No. 394, to permit full utilization of the vessel's deadweight.

The bases for the Board's determinations, as described herein, are available for public inspection in the Office of the Secretary, Room 3099-B, Maritime Administration, Commerce Department Building, 14th & "E" Streets, NW, Washington, D.C. 20230.

Dated: April 25, 1975.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-11356 Filed 4-29-75;8:45 am]

TANKER CONSTRUCTION PROGRAM

Procedure To Be Followed When Considering a Change to the Principal Characteristics of a Vessel; Environmental Impact Statement

An environmental impact statement entitled, "Maritime Administration Tanker Construction Program," NTIS Report No. EIS730725-F, was published on May 30, 1973, in accord with the procedures established by section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). The statement concerned the impact of a Federal program of assistance to aid in the construction by private industry of a fleet of U.S.-owned oil-carrying vessels during the decade of the 1970's. Vessel classes described in the statement range from approximately 35,000 DWT to 400,000 DWT.

Procedures have already been established for issuing new or supplemental statements for vessels proposed for construction under the program. However, in cases where a contract for the construction of an oil-carrying vessel under the program has already been signed, and where the purchaser or owner subsequently requests that a change be allowed in the contract so that the principal characteristics of the vessel are altered, there is presently no formal procedure for providing for a new or supplemental statement, when one is made necessary because the environmental impact of the vessel is affected by the alteration in principal characteristics. The Maritime Administration proposes the following procedure to be followed by the Maritime Subsidy Board (Board) when it considers applications for contract changes which alter a vessel's principal characteristics so as to possibly affect its environmental impact, as previously stated and published:

1. The purchaser/owner will submit his Change Inquiry in accordance with the procedures established in the contract between the purchaser and the Board.

2. In those cases in which the Maritime Administration staff has determined that the vessel's principal characteristics will be altered by the proposed change and that these alterations may affect the previously published environmental impact of the vessel, the procedures of the following paragraphs will apply. The principal characteristics referred to above include length, beam, depth, draft, speed, cargo cubic, or deadweight, as well as those environmental features required by section 70 of the Standard Specifications for Merchant Ship Construction, December 1972, which were made mandatory by Docket A-75, MarAd Tanker Construction Program, served by the Board on August 30, 1973.

2.1 The Board will publish in the FEDERAL REGISTER a notice of the proposed change altering the principal characteristics of the vessel, which notice will indicate the Board's determination of whether the environmental impact of the vessel as altered is adequately described by the aforementioned Environmental Impact Statement or by any new or supplemental statement previously issued for that vessel.

2.2 If the Board has determined that the impact of the proposed vessel, as altered, is not adequately described by the existing statements, it shall prepare and issue a new or supplemental statement, as appropriate, in accord with the procedures established by NEPA. Upon consideration of the final draft of the new or supplemental statement, the Board will act upon the Change Inquiry in accord with its normal procedures for changes.

2.3 If the Board, however, had determined that the existing statement(s) is (are) adequate, then the purchaser/owner shall be notified in writing of the Board's determination in accordance with the applicable contract procedure, and the Board, upon consideration of the existing statement or statements, will act upon the Change Inquiry in accord with its normal procedures for changes.

2.3.1 The bases for the Board's determination of adequacy, in 2.3 above, will be available for public inspection in the Office of the Secretary, Maritime Administration, at least 20 days prior to the time that the action becomes final.

Dated: April 25, 1975.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-11354 Filed 4-29-75;8:45 am]

[Docket No. S-446]

WATERMAN STEAMSHIP CORP.

Application

Notice is hereby given that Waterman Steamship Corporation (Waterman) has applied to amend its present Operating-Differential Subsidy Agreement, Contract No. MA/MSB-115 to increase from 26 to 32 the maximum number of sailings permitted to be made on its subsidized service on Trade Route No. 18 between U.S. Atlantic and Gulf ports and ports in Southwest Asia from Suez to Burma, inclusive, and Africa on the Red Sea and Gulf of Aden.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1175), should by the close of business on May 13, 1975, notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service, served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of United States registry in such essential service is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS)).

By Order of the Maritime Administration.

Dated: April 25, 1975.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-11338 Filed 4-29-75;8:45 am]

[Docket No. S-447]

STATES STEAMSHIP CO.

Application

Notice is hereby given that States Steamship Company, a Nevada corporation, has filed an application dated May 10, 1974, and amended October 17, 1974, with the Maritime Subsidy Board (Board) pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act), for a twenty-year operating-differential subsidy contract for operation of three services on Trade Route No. 29 (U.S. Pacific ports/Far East) and a portion of Trade Route No. 17 between U.S. Pacific ports and Indonesia, Malaysia and Singapore.

If this application is approved, the twenty-year agreement would succeed and become effective upon termination of the applicant's present agreement, Contract No. FMB-62, which will expire on December 31, 1977.

States Steamship Company is presently authorized to operate a fleet of 13 subsidized vessels, and until replaced as required by the United States, the fleet to be operated under a new contract would consist of four MA design C7-S-95a RO/RO vessels and nine C4-type cargo vessels. The Company proposes no change in the minimum and maximum sailings authorized as of this date under its present operating-differential subsidy contract for operations in calendar year 1975 and thereafter. The only changes which the Company proposes in its contract route descriptions are the addition of Indonesia, Malaysia and Singapore to its Service B and Service C (a separate application has also been filed for service to those areas under Contract No. FMB-62), and the elimination of reference to domestic service.

Apart from the above changes, States Steamship Company would, if its application is approved, continue to operate its fleet in three services on Trade Route No. 29. These services may be briefly described as follows:

1. *Service A.* A minimum of 10 and a maximum of 16 sailings per annum between U.S. Pacific Northwest ports and the Far East, with privilege calls at ports in Canada, Alaska and Hawaii.

2. *Service B.* A minimum of 20 and a maximum of 41 sailings per annum between U.S. Pacific ports and the Far East, with privilege calls at ports in Canada, Alaska and Hawaii.

3. *Service C.* A minimum of 22 and a maximum of 38 sailings per annum between California and the Far East, with privilege calls at ports in Hawaii.

Notwithstanding the authority to serve ports in the Far East on any of the three services, the Company is also limited in the total amount of service it may provide to certain areas in the Far East.

Interested parties may inspect this application in the Office of the Secretary, Maritime Subsidy Board, Room 3099B, Department of Commerce Building, 14th & E Streets, NW., Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on May 16, 1975. The Maritime Subsidy Board will consider these views and comments, and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidies (ODS)).

By Order of the Maritime Subsidy Board

Dated: April 25, 1975.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-11357 Filed 4-29-75;8:45 am]

TANKER CONSTRUCTION PROGRAM

Draft Standard Specifications—Deadline Date for Submission of Comments

The FEDERAL REGISTER, Vol. 40, No. 33, dated February 18, 1975, gave notice that the draft of a proposed publication, Standard Specifications for Tanker Construction, was available to interested parties for review and comment. The notice also mentioned that comments should be submitted by April 1, 1975.

Because of the time required to distribute copies of the draft specification and the magnitude of the required review, the deadline date for submitting comments is hereby extended to July 1, 1975. Comments should be addressed to Ronald K. Kiss, Chief Division of Ship Design, Room 4059 U.S. Department of Commerce, Maritime Administration, Washington, D.C. 20230.

Dated: April 25, 1975.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75-11355 Filed 4-29-75;8:45 am]

National Oceanic and Atmospheric Administration

SUBCOMMITTEE ON CLIMATE CHANGE OF THE ENVIRONMENTAL RESOURCES COMMITTEE OF THE DOMESTIC COUNCIL

Open Meeting

The Subcommittee on Climate Change of the Environmental Resources Committee of the Domestic Council will meet from 10 a.m. until about 4 p.m. on May 15 and 16, 1975 in Room 730 at 1800 G Street, NW, Washington, D.C.

As one of its goals, the Subcommittee has been asked to examine and make recommendations on the Federal role in weather modification, including such aspects as operations, regulations, and research priorities. The only agenda item for this open meeting is to hear and discuss statements and comments by nonfederal interests concerning the Federal role in weather modification. To this end, several scientific, technical, legal, agricultural, economic, legislative, and other specialists associated with some aspect of weather modification have been invited to present their views.

This meeting will be open to public observation, and a period will be set aside for oral comments or questions by other members of the public which do not exceed 10 minutes each. Public statements regarding the subject of the meeting may be submitted up to 15 days after the meeting date. Approximately 20 seats will be available to the public on a first-come first-served basis.

Inquiries concerning this meeting may be addressed to Dr. Ronald L. Lavole, Director, Environmental Modification Office, National Oceanic and Atmospheric Administration, (EM5), 6010 Executive Blvd., Rockville, Maryland 20852, Telephone (301) 496-8721.

Dated: April 25, 1975.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration, National Oceanic and Atmospheric Administration.

[FR Doc.75-11234 Filed 4-29-75;8:45 am]

Office of Trade Adjustment Assistance

ALGY SHOES, INC.

Notice of Petition and Hearing

Correction

In FR Doc. 75-10874 appearing on page 18014 in the issue of Thursday, April 24, 1975 the date in the 1st line should read "April 14, 1975".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FDA-225-75-4043]

ARTX TELECOMMUNICATION EQUIPMENT

Memorandum of Understanding With the Arkansas State Department of Health

Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that future memoranda of understanding between the Food and Drug Administration and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs issues the following notice:

The Food and Drug Administration executed a memorandum of understanding with the Arkansas State Department of

Health on February 20, 1975. The purpose of the memorandum is to establish the procedures and guidelines for the operation, maintenance, and protection of FDA-rented ARTX Telecommunication Equipment. It reads as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE ARKANSAS STATE DEPARTMENT OF HEALTH AND THE FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To establish the procedures and guidelines for the operation, maintenance and protection of FDA-rented ARTX Telecommunication Equipment located in the Division of Food Services, Bureau of Consumer Protection Services, 4815 West Markham Street, Little Rock, Arkansas 72201.

II. *Background.* The FDA, Assistant Secretary for Health, Department of HEW, and the General Services Administration have approved a program to install full telecommunication transmit and receive terminals in a number of prime state food and drug agencies. Although terminals will be placed in a number of prime food and drug regulatory agencies, there are a number of other agencies with food and drug responsibilities in each state, where no terminal will be installed. Therefore, your agency, being one that received a terminal, must agree to share the terminal with other food and drug agencies in your state to assure that the communication system is accessible to all agencies with food and drug related responsibilities.

In addition to terminal-sharing, it is necessary for our two agencies to assure that proper operation and necessary supporting requirements for the equipment is maintained and proper security is provided for the equipment.

III. *Substance of Agreement.* A. The Food and Drug Administration agrees:

1. To arrange for the installation of the equipment in the location designated by your agency.

2. To support financially the cost of initial installation of the equipment and pay directly to GSA and Western Union the monthly rental cost. After the initial installation, the state will be responsible for relocation installation cost, unless relocation is in conjunction with a major move of the terminal agency to a new location address.

3. To identify for you those units in your state on which terminal-sharing must be accomplished.

4. To require that the terminal location agency (your agency) submit to FDA a terminal-sharing plan to be developed by you and other sharing units in your state.

5. To arrange through Western Union for training of terminal operators.

6. To provide operation instruction manual.

7. To withdraw financial support for the terminal if gross misuse of the terminal is practiced after due notice.

B. The State Terminal Agency agrees:

1. To provide suitable physical location for equipment with adequate security protection.

2. To provide and pay for electric power source to operate the terminal. (110 volts.)

3. To provide for paper, tape and other material necessary for the operation of the equipment.

4. To share the terminal with other food and drug agencies in the state according to a terminal-sharing plan agreed to by each potential user.

5. To submit to the FDA Regional Office monthly traffic log. (Form to be furnished by FDA.)

6. To submit promptly all messages received for addressees other than your agencies. Transmit promptly messages to FDA received from other appropriate agencies.

7. Maintain operator coverage for the terminal between normal working hours of your agency.

8. Notify vendor (Western Union) of any breakdown of the equipment or other needs for maintenance.

9. Notify FDA (Regional or Headquarters) of periods that the equipment is out-of service.

10. That the system will be used only for communication between your state and FDA (Regional, District, or Headquarters Office). It is understood that the equipment is not to be used for communication between state agencies.

IV. *Name and Address of Terminal Agency.* Arkansas State Department of Health, 4815 West Markham Street, Little Rock, Arkansas 72201.

V. *Liaison Officers.* For Arkansas State Dept. of Health: Mr. Conn Roden, Director of Food Service, Bureau of Consumer Protection Services.

Address: Arkansas State Department of Health, 4815 West Markham St., Little Rock, Arkansas 72201.

Telephone No.: (501) 661-2171.

For FDA: Joe L. Perrin, Program Mgr./Intergovernmental Relations.

Address: 505 S. Ervay St., Dallas, TX 75202.

Telephone No.: (214) 749-3951.

VI. *Period of Agreement.* This agreement, when accepted by both parties, will have an effective period of performance three (3) years from date of signature and may be modified by mutual consent by both parties or may be terminated by either party upon a thirty (30) day advance written notice to the other.

Approved and accepted for the Arkansas State Dept. of Health:

Dated: February 3, 1975.

E. J. Easley, *Acting Director, Arkansas State Department of Health.*

Approved and accepted for the Food and Drug Administration:

Dated: February 20, 1975.

Philip B. White, *Regional Food & Drug Director, Region VI.*

Effective date. This Memorandum of understanding became effective February 20, 1975.

Dated: April 23, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-11231 Filed 4-29-75;8:45 am]

CARDIOVASCULAR AND RENAL ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776; 5 U.S.C. App. I), the Food and Drug Administration announces the following public advisory committee meeting and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act:

Committee name	Date, time, place	Type of meeting and contact person
Cardiovascular and Renal Advisory Committee.	May 20, 9 a.m., Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 10 a.m., closed after 10 a.m., Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20852, (301) 443-4730.

Purpose. Reviews and evaluates all available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the treatment of cardiovascular and renal disorders.

Agenda. Open session: Discussion of previous minutes; comments and presentations by interested persons. Closed session: Discussion of NDA 12-151.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

The Freedom of Information Act recognized that the premature disclosure of regulatory plans, or indeed internal discussions of alternative regulatory approaches to a specific problem, could have adverse effects upon both public and private interests. Congress recognized that such plans, even when finalized, may not be made fully available in advance of the effective date without damage to such interests, and therefore provided for this type of discussion to remain confidential. Thus, law enforcement activities have long been recognized as a legitimate subject for confidential consideration.

These committees often must consider trade secrets and other confidential information submitted by particular manufacturers which the Food and Drug Administration by law may not disclose, and which Congress has included within the exemptions from the Freedom of Information Act. Such information includes safety and effectiveness information,

product formulation, and manufacturing methods and procedures, all of which are of substantial competitive importance.

In addition, to operate most effectively, the evaluation of specific drug or device products requires that members of committees considering such regulatory matters be free to engage in full and frank discussion. Members of committees have frequently agreed to serve and to provide their most candid advice on the understanding that the discussion would be private in nature. Many experts would be unwilling to engage in candid public discussion advocating regulatory action against a specific product. If the committees were not to engage in the deliberative portions of their work on a confidential basis, the consequent loss of frank and full discussion among committee members would severely hamper the value of these committees.

The Food and Drug Administration is relying heavily on the use of outside experts to assist in regulatory decisions. The Agency's regulatory actions uniquely affect the health and safety of every citizen, and it is imperative that the best advice be made available to it on a continuing basis in order that it may most effectively carry out its mission.

A determination to close part of an advisory committee meeting does not mean that the public should not have ready access to these advisory committees considering regulatory issues. A determination to close the meeting is subject to the following conditions: First, any interested person may submit written data or information to any committee, for its consideration. This information will be accepted and will be considered by the committee. Second, a portion of every committee meeting will be open to the public, so that interested persons may present any relevant information or views orally to the committee. The period for open discussion will be designated in any announcement of a committee meeting. Third, only the deliberative portion of a committee meeting, and the portion dealing with trade secret and confidential information, will be closed to the public. The portion of any meeting during which nonconfidential information is made available to the committee will be open for public participation. Fourth, after the committee makes its recommendations and the Commissioner either accepts or rejects them, the public and the individuals affected by the regulatory decision involved will have an opportunity to express their views on the decision. If the decision results in promulgation of a regulation, for example, the proposed regulation will be published for public comment. Closing a committee meeting for deliberations on regulatory matters will therefore in no way preclude public access to the committee itself or full public comment with respect to the decisions made based upon the committee's recommendation.

The Commissioner has been delegated the authority under section 10(d) of the Federal Advisory Committee Act to issue a determination in writing, containing the reasons therfor, that any advisory committee meeting is concerned with matters listed in 5 U.S.C. 552(b), which contains the exemptions from the public disclosure requirements of the Freedom of Information Act. Pursuant to this authority, the Commissioner hereby determines, for the reasons set out above, that the portions of the advisory committee meetings designated in this notice as closed to the public involve discussion of existing documents falling within one of the exemptions set forth in 5 U.S.C. 552(b), or matters that, if in writing, would fall within 5 U.S.C. 552 (b), and that it is essential to close such portions of such meetings to protect the free exchange of internal views and to avoid undue interference with Agency and committee operations. This determination shall apply only to the designated portions of such meetings which relate to trade secrets and confidential information or to committee deliberations.

Dated: April 24, 1975.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.75-11232 Filed 4-29-75;8:45 am]

National Institutes of Health

BOARD OF REGENTS OF THE NATIONAL LIBRARY OF MEDICINE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on June 26-27, 1975 in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Extramural Programs Subcommittee of the Board of Regents of the National Library of Medicine on the preceding day, June 25, 1975, from 2 to 5 p.m., in Conference Room "B" of the Library.

The meeting of the Board will be open to the public all day on June 26 and from 9 to 9:30 a.m. on June 27 for administrative reports and program and operation discussions. Attendance by the public will be limited to space available. In accordance with provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the entire meeting of the Subcommittee on June 25 will be closed to the public, and the regular Board meeting on June 27 will be closed from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual initial pending and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

In addition, the closed portion of the regular Board meeting will involve the review, discussion and evaluation of individual contract proposals in accordance with the provisions set forth in section 552(b)(4) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463. The proposals contain information of a proprietary and confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20014, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.348, 13.349, 13.350, 13.351, 13.352, 13.353—National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11261 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY ALLERGY AND INFECTIOUS DISEASES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, June 19 and 20, 1975, in Building 31, Conference Room 7, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 10:30 a.m. and from 1:30 p.m. to 5 p.m. on June 19, 1975, to discuss administrative reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 19 from 10:30 a.m. to 1:30 p.m. and on June 20 from 9 to adjournment, for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications, and applications for National Research Service and Institutional Research Service Awards. The closed portions of the meetings involve solely the internal expression of views and judgments of Council members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, Bethesda, Maryland, telephone (301) 496-5717, will furnish rosters of Council members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, 13.856, 13.857, and 13.858, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11255 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY ENVIRONMENTAL HEALTH SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, on June 19-20, 1975, from 9 a.m. to 5 p.m., in Building 18, Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina. This meeting will be open to the public from 9 a.m. to 12 noon on June 19, 1975, to discuss administrative reports, recent legislation, interagency activities, the Institute's program on the health effects of the energy program, and other items of interest, and for the presentation of a short seminar on the development of respiratory tract deposition models. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 19 from 1 p.m. to 5 p.m. and on June 20 from 9 a.m. to adjournment for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meeting involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Leota B. Staff, Committee Management Officer, NIEHS, Westwood Building, Room 404, Bethesda, Maryland, 20014, (301) 496-7483, will furnish rosters of committee members, and a summary of the meeting, Dr. Colbert D. LeMunyan, Acting Associate Director for Extramural Programs, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina 27709, (919) 549-8411, extension 3353, will furnish substantive program information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13-328, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11257 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY GENERAL MEDICAL SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, June 16-17, 1975, Building 31C, Conference Room 10. This meeting will be open to the public on June 16 from 9 a.m. to 10:30 a.m., for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 16 from 10:30 a.m. to 5 p.m., and on June 17 from 9 a.m. to adjournment for the review, discussion and evaluation of initial pending, supplemental, and renewal grant applications; applications for the National Research Service Awards and research career development awards. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications which contain information of proprietary or confidential nature, including detailed research protocols; designs and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Research Reports Officer, NIGMS, Building 31, Room 4A46, Bethesda, Maryland 20014, Telephone: (301) 496-5676, will provide a summary of the meeting and a roster of Council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, Building 31, Room 4A52, Telephone: (301) 496-5231, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13-859, 13-860, 13-861, 13-862, 13-863, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11258 Filed 4-29-75;8:45 am]

NANCDS COUNCIL PLANNING SUBCOMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the NANCDS Council Planning Subcommittee, June 5, 1975, at 8:30 a.m. in the Connecticut Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on June 5, 1975, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6) of Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 10:30 a.m. on June 5, 1975, to adjournment on June 5, for the review, discussion and evaluation of individual initial pending and renewal grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with applications for research grants.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Building 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland, phone: (301) 496-5751, will furnish summaries of the meeting and rosters of committee members.

Dr. O. Malcolm Ray, Executive Secretary of the Committee, Room 7A18A, Westwood Building, NIH, NINCDS, Bethesda, Maryland, phone: (301) 496-7220, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.851, 13.852, 13.853, 13.854, National Institutes of Health.)

Dated: April 21, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11260 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY NEUROLOGICAL AND COMMUNICATIVE DISORDERS AND SROKE COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Neurological and Communicative Disorders and Stroke Council, National Institutes of Health, June 19, 20, and 21, 1975, at 9 a.m. in Building 31-C, Conference Room 8, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. until 1:30 p.m. on June 19, 1975, and from 11 a.m. to 1:30 p.m. on June 20, 1975, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6) of Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1:30 p.m. on June 19, 1975, until 11 a.m. on June 20, 1975, and from 1:30 p.m. on June 20, 1975, until the conclusion of the meeting on June 21, 1975, for the review, discusion and evaluation of individual initial pending and renewal research grant applications, Teacher-Investigator Awards, Institutional National Research Service Awards, Individual Fellowships, and Research Career

Development Awards. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with applications for research grants.

The Chief, Office of Scientific and Health Reports, Mrs. Ruth Dudley, Building 31, Room 8A03, NIH, NINCDS, Bethesda, Maryland, phone: (301) 496–5751, will furnish summaries of the meeting and rosters of committee members.

Dr. Murray Goldstein, Executive Secretary, Westwood Building, Room 757, Bethesda, Maryland, telephone (301) 496–7705, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.851, 13.852, 13.853, 13.854, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75–11259 Filed 4–29–75;8:45 am]

PERIODONTAL DISEASES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Periodontal Diseases Advisory Committee, National Institute of Dental Research, National Institutes of Health, Bethesda, Maryland, June 2–3, 1975, Building 31–C, Conference Room 8.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. on June 2, and from 9 a.m. to adjournment on June 3, 1975, for discussion of research programs on the prevention and control of dental plaque, to plan for manpower development, to plan for the establishment of research centers, and the feasibility of establishing cooperative clinical research units. Attendance by the public will be limited to space available.

Dr. Anthony A. Rizzo, Special Assistant to the Associate Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 521, Bethesda, Maryland 20014 (phone number 301–496–7784) will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13,302, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, N.I.H.

[FR Doc.75–11256 Filed 4–29–75;8:45 am]

SICKLE CELL DISEASE ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Sickle Cell Disease Advisory Committee, National Heart and Lung Institute, June 12 and 13, 1975, National Institutes of Health, Building 31, Conference Room 10, C Wing. The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on June 12 and 13, 1975, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLI, Building 31, Room 5A21, (301) 496–4236, will provide summaries of the meeting and rosters of the committee members.

Mr. Howard F. Manly, Executive Secretary, Sickle Cell Disease Advisory Committee, NHLI, Building 31, Room 5A03, (301) 496–6931, will furnish substantive program information.

Dated: April 22, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75–11262 Filed 4–29–75;8:45 am]

CARDIOLOGY ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart and Lung Institute, to take place on June 5 and 6, 1975, in Building 31 on the main NIH Campus (9000 Rockville Pike, Bethesda, Maryland), in Conference Room 9.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on each of these days to discuss the Cardiology Program of the Division of Heart and Vascular Diseases. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart and Lung Institute, Building 31, Room 5A21, National Institutes of Health, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members.

Peter L. Frommer, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart and Lung Institute, Landow Building, Room A922, Bethesda, Maryland 20014, phone (301) 496–5421, will provide substantive program information.

Dated: April 22, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75–11253 Filed 4–29–75;8:45 am]

CHEMICAL/BIOLOGICAL INFORMATION HANDLING REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Chemical/Biological Information-Handling Review Committee, Division of Research Resources, 9 a.m., June 2, 1975, National Institutes of Health, Bldg. 31, Rm. 6A–21, 9000 Rockville Pike, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 11 a.m. during the introductory remarks and the presentation on tabulation and analysis of immunoglobulin sequence data and from 1:30 p.m. to adjournment during the discussion of Chemical/Biological Information-Handling Program long-range plans. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 11 a.m. to 12:30 p.m. for the review of research prospectuses submitted by organizations seeking access to PROPHET System services. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on these individual research prospectuses which contain information of a proprietary or confidential nature, including research protocols and other technical information on the subject of applications of computers to research in pharmacology and personal information concerning individuals associated with the prospectuses.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–39, Bethesda, Maryland 20014, telephone Area Code 301, 496–5545, will provide summaries of meetings and rosters of committee members.

Dr. William F. Raub, Program Director, Chemical/Biological Information-Handling Program, Division of Research Resources, Bldg. 31, Rm. 6A–04, Bethesda, Maryland 20014, telephone Area Code 301, 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.677, National Institutes of Health.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75–11250 Filed 4–29–75;8:45 am]

EPIDEMIOLOGY AND DISEASE CONTROL STUDY SECTION

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Epidemiology and Disease Control Study Section, Division of Research Grants, at 8:30 a.m., May 23, 1975, Dulles Marriott, Washington, D.C. 20041.

This meeting will be open to the public on May 23, 1975 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Study Section business. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. to adjournment for the review, discussion and evaluation of applications for individual and institutional National Research Service Awards, Research Career Development Awards and Pub. L. 480 awards. The closed portion of the meeting involves solely the internal expression of views and judgments of study section members on individual applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20014, telephone area code 301-496-7441 will furnish summaries of the meeting and rosters of committee members. Mr. Glenn G. Lamson, Jr., Executive Secretary, Room 4A-11, Westwood Building, Bethesda, Maryland 20014, telephone number 301-496-7080, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.337, National Institutes of Health, DHEW.)

Dated: April 24, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11249 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY COUNCIL ON AGING

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, June 9-10, 1975, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on June 9 from 9 a.m. to 5 p.m. for current status reports and discussion of the research plan. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 10 from 9 a.m. to adjournment on June 10 for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portion of the meeting will involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Michael Machesko, Administrative Officer, National Institute on Aging, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Maryland, Area Code (301), 496-2859, will provide summaries of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health.)

Dated: April 21, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer NIH.

[FR Doc.75-11254 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY RESEARCH RESOURCES COUNCIL

Meeting

Pusuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources, June 19-20, 1975, Conference Room 9, Building 31, Bethesda, Maryland 20014.

This meeting will be open to the public from 9 a.m. to recess of June 19, 1975 for: the conduct of Council business; report of the Acting Director, DRR; review of the Biotechnology Resources Program; and a presentation on the "Analysis of Relationship between Clinical Research and Basic Research in Academic Institutions." Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 20 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Room 5B39, Building 31, Bethesda, Maryland 20014, (301) 496-5545 will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Assistant Director, Division of Research Resources, National Institutes of Health, Room 5B03, Building 31, Bethesda, Maryland 20014, (301) 496-6611, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.371, 13.375, National Institutes of Health.)

Dated: April 21, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11251 Filed 4-29-75;8:45 am]

NATIONAL HEART AND LUNG ADVISORY COUNCIL

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart and Lung Advisory Council, National Heart and Lung Institute, June 19-21, 1975, from 9 a.m. to 5 p.m., in Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on June 19 from 9 a.m. to 5 p.m. to discuss program policies and issues. Attendance by the public will be limited to space available. In addition, meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be held on June 18, 1975 in Building 31; the Manpower Subcommittee at 8 p.m. in Conference Room 4, A Wing, and the Research Subcommittee at 8 p.m. in Conference Room 10, C Wing.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 20 from 9 a.m. to 5 p.m., and on June 21 from 9 a.m. to adjournment for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The Manpower Subcommittee of the above Council will be closed from 8 to 10 p.m., and athe Research Subcommittee will be closed from 8 to 11 p.m. on June 18, 1975, also for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Health, Bethesda, Maryland 20014 (301) Room 5A21, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-4236, will provide summaries of the meetings and rosters of the Council members.

Dr. Jerome G. Green, Director of Extramural Affairs, NHLI, Westwood Building, Room 5A18 (301) 496-7416, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, 13.838, and 13.839, National Institutes of Health.)

Dated: April 21, 1975.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.75-11252 Filed 4-29-75;8:45 am]

Office of Education

HIGHER EDUCATION PERSONNEL TRAINING PROGRAMS

Criteria for Funding of Applications for Fellowships, Institutes, and Short-Term Training Programs for Fiscal Year 1975

On page 4327 of the FEDERAL REGISTER of January 29, 1975, there were published Proposed Criteria for Funding of Applications for Fellowships, Institutes, and Short-Term Training Programs for Fiscal Year 1975. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed criteria.

No objections have been received and the proposed criteria are hereby adopted without change and are set forth below.

Effective date. The notice of proposed rule making was transmitted to Congress on January 23, 1975 pursuant to section 431(d) of the General Education Provisions Act (20 U.S.C. 1232(d)). The time period set forth therein for congressional action has expired without such action having been taken.

Therefore these criteria shall become effective on April 30, 1975.

(Catalog of Federal Domestic Assistance Number 13.461, Higher Education Personnel Development—Institutes and Short-Term Training; and Number 13.462, Higher Education Personnel Fellowships)

Dated: April 10, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: April 24, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

CRITERIA FOR FELLOWSHIPS, INSTITUTES, AND SHORT-TERM TRAINING PROGRAMS

In addition to evaluation on the basis of the criteria set forth in the General Provisions for Office of Education Programs at 45 CFR 100a.26, the Commissioner will select applications to be funded under Title V, Part E of the Higher Education Act of 1965 on the basis of the following criteria:

(a) The extent to which the proposed training program is concerned with the following priorities:

(1) Programs that focus on ameliorating the shortage of specialized higher education personnel who will serve the needs of the bilingual, handicapped, Native Americans and junior and community colleges.

(2) Programs for financial aid officers and business officers.

(b) The extent to which the application contains concrete data and other information evidencing need in higher education to which the program is addressed.

(c) The extent to which the objectives of the training program are stated clearly and are sharply focused to meet the need.

(d) The extent to which the application contains a clear and detailed description of training procedures which will effectively achieve the objectives.

(e) The extent to which the proposed program includes effective procedures for evaluation of the impact of the training in meeting the need.

(f) The extent to which the proposed staff of the program is qualified to achieve its specific objectives.

(g) The extent to which the application provides evidence that the institution and groups involved in the training program are committed to its objectives.

(h) The ability of the applying institution to offer a high quality higher education personnel preparation program.

(i) The amount and extent of previous planning and development of the program.

(j) The extent to which a carefully conceived and effectively supervised internship experience is included as an integral feature of the training proposal.

(20 U.S.C. 1119b)

[FR Doc.75-11300 Filed 4-29-75;8:45 am]

NATIONAL ADVISORY COUNCIL FOR CAREER EDUCATION

Notice of Public Meeting

Correction

In FR Doc. 75-10766 appearing at page 18019 in the FEDERAL REGISTER for Thursday, April 24, 1975 the proposed agenda for May 15 contains four items. "Survey" should appear on the second line as the second item.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCGD5-75-03R]

PRESIDENT'S CUP REGATTA

Special Local Regulations, Washington, D.C.

Under the authority of the Act of April 28, 1908 (35 STAT 69) as amended, and 33 CFR 100.35, as amended, this notice promulgates special local regulations for the President's Cup Regatta. These special local regulations are established to insure the safety of life on the Potomac River at Washington, D.C., immediately before, during, and immediately after this regatta. Since these special rules must be made effective in less than 30 days to apply at the time of the scheduled event, I find that notice and public procedure on the issuance of these rules is impracticable and contrary to the public interest and that they may be made effective in less than 30 days from publication.

(a) *Location.* The area subject to these regulations is those waters enclosed by a line drawn from the southern tip of Haines Point northwards along the eastern seawall to a point 1,000 feet from the southern tip of Haines Point; thence easterly to a point 400 feet from the seawall; thence in a southerly direction to a point 1,400 feet distant, thence along a line of bearing 240° T. to the Virginia shore, upstream thence along the Virginia shoreline to the Penn Central Railroad bridge between Washington, D.C., and Arlington, Va.; thence 034° T. to the Potomac Park-Potomac River shoreline; thence along the Potomac Park-Potomac River shoreline to the southern tip of Haines Point.

(b) *Regulations.* (1) Except for participants in the President's Cup Regatta or persons or vessels authorized by the Coast Guard patrol officer, no person or vessel may enter or remain in the area specified in paragraph (a) of these regulations.

(2) The operator of any vessel in the immediate vicinity of the area specified in paragraph (a) above of these regulations shall:

(i) Stop his vessel immediately upon hearing five or more short blasts of a horn or whistle from any vessel displaying a Coast Guard emblem; and

(ii) Proceed as directed by any Coast Guard officer or petty officer.

(3) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(4) The Coast Guard patrol officer is a commissioned officer of the Coast Guard, who has been designated by the Commander, Fifth Coast Guard District.

(5) These regulations and other applicable laws and regulations are enforced by Coast Guard officers and petty officers on board Coast Guard, public, and private vessels displaying the Coast Guard emblem.

(Sec. 1, 35 Stat. 69 as amended, sec. 6(b)(1) 80 Stat. 937; 46 U.S.C. sec. 454, 49 U.S.C. sec. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b).)

Effective dates. These regulations are effective from 9 a.m. e.d.s.t. until 6 p.m. e.d.s.t. on May 28, 29, 30, 31 and June 1, 1975.

Dated: April 16, 1975.

ROSS P. BULLARD,
Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc.75-11226 Filed 4-29-75;8:45 am]

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

MEETING

The Citizens' Advisory Committee on Environmental Quality will meet on May 30, 1975, at 10 a.m. in Room 500, 1700 Pennsylvania Avenue NW., Washington, D.C.

The Committee advises the President and the Council on Environmental Quality on matters pertaining to environmental quality. The purpose of the

meeting is to review pending Committee business and to consider Committee activities for the coming year. Subjects discussed will include legislation, Committee publications, land use, energy, solid waste, the use of abandoned railroad rights of way and utility rights of way for recreation trails, and other current environmental issues.

The meeting will be open to the public. Persons planning to attend the meeting are requested to notify in writing or by telephone no later than Thursday, May 29, 1975, Lawrence N. Stevens, Executive Director, Citizens' Advisory Committee on Environmental Quality, 1700 Pennsylvania Avenue, NW., Washington, D.C. 20006, telephone (202) 223-3040. Members of the public may file written statements with the Committee before or after the meeting. Persons wishing to speak at the meeting are requested to consult with the Executive Director no later than May 26, 1975.

Requests for information should be submitted to the Executive Director (address given above).

LAWRENCE N. STEVENS,
Executive Director, Citizens' Advisory Committee on Environmental Quality.

[FR Doc.75-11209 Filed 4-29-75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 27758]

DETROIT-BOSTON NONSTOP ROUTE PROCEEDING

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 10, 1975, at 10 a.m. (local time), in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before May 27, 1975, and the other parties on or before June 3, 1975. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., April 24, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-11303 Filed 4-29-75;8:45 am]

[Docket 27764]

McCULLOCH INTERNATIONAL AIRLINES, INC. STOCK ACQUISITION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 20, 1975, at 10 a.m. (local time), in Room 726, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge Burton S. Kolko.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before May 7, 1975, and the other parties on or before May 14, 1975. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., April 24, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-11304 Filed 4-29-75;8:45 am]

NATIONAL AIRLINES, INC. "NO FRILL" FARES

[Docket 27671]

Change of Prehearing Conference Room

Notice is hereby given that the Prehearing Conference in the above-entitled matter which is currently assigned to be held on May 7, 1975 (40 FR 17070, Apr. 16, 1975) at 10 a.m. (local time) in Room 1031, North Universal Building, 1875 Connecticut Ave. NW., Washington, D.C., will be held instead in Room 911, Universal Building, 1825 Connecticut Ave. NW., Washington, D.C., on May 7, 1975, at 10 a.m. (local time).

Dated at Washington, D.C., April 24, 1975.

[SEAL] WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc.75-11305 Filed 4-29-75;8:45 am]

[Docket 26877]

OVERSEAS NATIONAL AIRWAYS, INC., ET AL.

Enforcement Proceeding; Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on April 30, 1975 (40 FR 14632, Apr. 1, 1975), is postponed to May 13, 1975, at 10 a.m. (local time), and will be held in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., April 24, 1975.

[SEAL] ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc.75-11306 Filed 4-29-75;8:45 am]

[Docket 27761]

THE PEORIA SERVICE INVESTIGATION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 17, 1975, at 10 a.m. (local time), in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Arthur S. Present.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before June 3, 1975, and the other parties on or before June 10, 1975. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., April 24, 1975.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.75-11307 Filed 4-29-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

ARCHITECTURAL GLAZING

Denial of Petition To Adopt Voluntary Standard as Interim Standard

Section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) provides that any person may petition the Consumer Product Safety Commission for the issuance, amendment, or revocation of a consumer product safety rule. Section 10 of the Act further provides that if the Commission denies such petition, it shall publish in the FEDERAL REGISTER its reasons for such denial.

By letter dated February 26, 1975, Mr. William W. Korn petitioned the Commission to adopt the voluntary architectural glazing standard ANSI Z 97.1-1972 as an interim consumer product safety standard until such time as a final consumer product safety standard for architectural

glass is issued by the Consumer Product Safety Commission and becomes effective.

The purpose of this notice is to announce that the Commission has denied Mr. Korn's petition.

On November 1, 1973, the Commission granted a petition to commence a proceeding for the issuance of a consumer product safety rule for architectural glass. As part of that proceeding the Commission accepted an offer of the Consumer Safety Glazing Committee (CSGC) to develop a standard applicable to architectural glass. Further, the Commission determined not to publish the ANSI voluntary standard applicable to architectural glass (ANSI Z 97.1–1972) in lieu of accepting an offer to develop a standard. A recommended standard for architectural glass was submitted to the Commission on January 24, 1975, by the CSGC and is currently being evaluated by the Commission.

In order to propose and promulgate an existing standard such as ANSI Z97.1–1972 as a consumer product safety standard, the Commission must follow the procedures outlined in the Consumer Product Safety Act and the regulations adopted under section 7 of the Act. (16 CFR 1105.1 et seq.). The Commission has no procedures available to issue "interim" standards, nor does the CPSA provide for the issuance of such standards. Further, the Commission does not believe it would serve a useful purpose to issue an "interim" standard pending the final outcome of the standards development process now in progress for architectural glass.

In view of the foregoing, the Commission denies the petition (CP 75–17) submitted by Mr. William W. Korn.

Dated: April 24, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.75–11239 Filed 4–29–75;8:45 am]

DEFENSE MANPOWER COMMISSION

NOTICE OF MEETING

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Commissioners of the Defense Manpower Commission will meet on May 16, 1975, at 9 a.m. in the New Executive Office Building, Room 2010, 726 Jackson Place NW., Washington, D.C. 20036.

The purpose of the meeting will be to discuss the general subject of Development and Utilization and issues relating thereto, and such other business as may be presented by the members.

The meeting will be open to the public. Interested persons wishing to attend should telephone (202) 254–7803 before close of business May 14, 1975.

Dated: April 25, 1975.

BRUCE PALMER, Jr.,
General, USA (Ret.),
Executive Director.

[FR Doc.75–11287 Filed 4–29–75;8:45 am]

MANPOWER REQUIREMENTS

Hearing

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Defense Manpower Commission will hold a public hearing on June 23, 1975, in Room 1220, The Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, from 9 a.m. to 4 p.m., so that representatives of public and private organizations and interested citizens can express their views on the issues which the Commission is required to address by its enabling legislation.

Pub. L. 93–155 directs the Commission to conduct a comprehensive study and investigation of the overall manpower requirements of the Department of Defense on both a short- and long-term basis with a view to determining what the manpower requirements are currently and will likely be over the next ten years, and how manpower can be more effectively utilized in the Department of Defense.

The Commission is required to submit its Final Report to the Congress and to the President not more than 24 months after the appointment of the Commission, and shall cease to exist 60 days after the submission of its Final Report.

In carrying out its study and investigation, the Commission has been directed to give special consideration to:

(1) The effectiveness with which civilian and active duty personnel are utilized, particularly in headquarters staffing and in the number of support forces in relation to combat forces;

(2) Whether the pay structure, including fringe benefits, is adequate and equitable at all levels;

(3) The distribution of grades within each Armed Force and the requirements for advancement in grade;

(4) The cost-effectiveness and manpower utilization of the United States Armed Forces as compared with the armed forces of other countries;

(5) Whether the military retirement system is consistent with overall Department of Defense requirements and is comparable to civilian retirement plans;

(6) The methods and techniques used to attract and recruit personnel for the Armed Forces, and whether such methods and techniques might be improved or new and more effective ones utilized;

(7) The implications for the ability of the Armed Forces to fulfill their mission as a result of the change in the socio-economic composition of military enlistees since the enactment of new recruiting policies provided for in Pub. L. 92–129 and the implication for national policies of this change in the composition of the Armed Forces; and

(8) Such other matters related to manpower as the Commission deems pertinent to the study and investigation.

Interested persons may make an oral presentation and/or submit a written statement for consideration by the Commission during the meeting.

The length and number of oral presentations to be made will depend on the number of requests received.

Each person desiring to make an oral presentation or submit a written statement must notify the Commission and provide at least 10 copies of the presentation statement by June 1, 1975. The order of the presentations on the agenda will be determined by the order in which requests are received by the staff.

Statements should be limited to the mission of the Commission as outlined in Pub. L. 93–155, or other current issues regarding Department of Defense manpower.

Written material in furtherance of presentations will be accepted by the Commission at the time of the meeting and for four days thereafter.

Persons wishing to make presentations, or interested persons wishing to attend the public hearing as observers, must notify Mr. Rippa of the Commission staff (202/254–7803) by June 1, 1975. Copies of the statements and other correspondence must be sent to: Defense Manpower Commission, 1111 18th Street NW., Room 301, Washington, D.C. 20036, ATTN: Hearing Management.

Dated: April 25, 1975.

BRUCE PALMER, Jr.,
General, USA (Ret.),
Executive Director.

[FR Doc.75–11286 Filed 4–29–75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 363–6]

SCIENCE ADVISORY BOARD EXECUTIVE COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held beginning at 8:30 a.m., May 16, 1975. The meeting will be held in Room 1101, Waterside Mall West Tower, 401 M Street SW., Washington, D.C.

This is a regularly scheduled meeting of the Committee. The agenda includes reports on the activities of other Committees of the Science Advisory Board, including a study of the question of organic substances in drinking water. A presentation will be made to inform the Committee as to activities of the National Academy of Sciences which are relevant to the EPA. In addition, the Committee will be consulted regarding: concepts for an environmental specimen bank, the scientific quality of EPA research programs, issues relating to the disposal of sludges from municipal wastewater treatment plants, and the review of reports summarizing the environmental effects of the disposal of hazardous pollutants to the land.

The meeting is open to the public. Any member of the public wishing to attend, participate, present a paper, or obtain additional information should contact

Dr. Thomas D. Bath, Executive Secretary, Science Advisory Board Executive Committee (202) 755-0263.

RUSSELL E. TRAIN,
Administrator.

APRIL 24, 1975.

[FR Doc.75-11317 Filed 4-29-75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

OLD OIL ALLOCATION PROGRAM

Entitlement Notice for February 1975

Correction

In FR Doc. 75-10087 appearing at page 17325 in the issue for Friday, April 18, 1975, in the table in the Appendix, make the following corrections:

1. Amoco is required to buy 354,482, not 354,842.
2. J&W is required to sell 10,047, not 10,040.
3. K-H-White is required to sell 0, not 7.
4. Kentucky is required to sell 4,588, not 4,580.
5. Kerr-McGee is required to sell 0, not 8.
6. Koch is required to sell 602,479, not 602,470.
7. LaGloria is required to sell 0, not 9.

FEDERAL MARITIME COMMISSION

BARBER LINES A/S AND THE WILHELMSEN COMPANIES

Proposed Cancellation of Agreement

Notice is hereby given that the following agreement(s) will be canceled by the Commission 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(s) at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect agreement(s) at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments with reference to an agreement(s) including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 19, 1975.

Notice of Request for Cancellation of Agreement Filed by:

Milton J. Levitt, Esq.
Palmer Serles & Baar
Attorneys at Law
120 Broadway
New York, New York 10005

Agreement No. 9809, as amended, among the Wilhelmsen Companies, the Fearnley Companies, the Klaveness Companies (as owners) and Barber Lines A/S (as charterer), originally approved by the Federal Maritime Commission on August 27, 1969, established a cooperative working arrangement among the parties in the trade between ports of the United States including Hawaii and worldwide ports.

The Fearnley Companies and the Klaveness Companies have withdrawn from the agreement and the Wilhelmsen Companies are no longer common carriers by water in the foreign commerce of the United States. Therefore, counsel for Barber Lines A/S has requested the Commission to terminate Agreement No. 9809, as amended. Barber Lines A/S will continue to operate as a common carrier in the foreign commerce of the United States.

By Order of the Federal Maritime Commission.

Dated: April 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-11335 Filed 4-29-75;8:45 am]

THE CANADIAN-AMERICAN WORKING ARRANGEMENT

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 NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old 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 May 19, 1975. 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.

Notice of agreement filed by:

Howard A. Levy, Esquire
Suite 727
17 Battery Place
New York, New York 10004

Agreement No. 10090-1, among the parties to the above-named agreement, is an agreement seeking authority to extend CAWA to the North Atlantic Baltic trades through admission of the Scandinavia/Baltic-Canada Westbound Freight Conference, the Canada-Scandinavia/Baltic Eastbound Freight Conference, the Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference (FMC Agreement No. 9982) and the North Atlantic Baltic Freight Conference (FMC Agreement No. 7670) as single parties thereto.

By Order of the Federal Maritime Commission.

Dated: April 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-11334 Filed 4-29-75;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by Section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/operator and vessels*
01017	Westfal-Larsen & Co. A/S: *Finnanger.*
01032	The Craig Shipping Company Limited: *Graigfion, Graiglas.*
01322	Cardigan Shipping Company Limited: *Norse Falcon.*
01325	O. H. Meling: *Sky Bird.*
01360	Midland Enterprises, Inc.: *CH 2081X, CH 2782.*
01426	Kuwait Shipping Company (S.A.K.): *IBN Hayyan.*
01605	D'Amico Societa Di Navigazione S.P.A.: *Giovannella D'Amico.*
01613	Reardon Smith Line Limited: *Devon City.*
01758	Chotin Transportation Inc.: *CH 1793X, CH 34914, J. B. Kleinpeter.*
01854	Southern Towing Company: *Mississippi.*
01890	A/S Billabong: *Star Asahi.*
01998	Gorthons Rederi AB: *Tilla Gorthon.*
02001	Rederiaktiebolaget Transatlantic: *Nike.*
02038	Polskie Linie Oceaniczne: *Jurata.*
02367	Canadian Pacific (Bermuda) Ltd.: *Fort Kipp.*
02501	Standard Oil Company of California: *Chevron Oregon.*
02977	J. Ray McDermott & Co., Inc.: *L. E. Stewart.*
03305	Grand Bassa Tankers, Inc.: *Grand Brilliance.*
03315	Afran Transport Company: *Afran Neptune.*
03484	Sanko Kisen K. K.: *Azarpad.*
03632	A/S Turid: *Eidrid, Gudrid, Sigrid.*
03511	Tamai Shosen K. K.: *Nikkei Maru No. 1.*
03692	Marmac Corporation: *LRL-200.*
04041	Compania Peruana do Vapores: *Hermanos Carcamo.*
04240	Petroleo Brasileiro S.A.: *Aracaju.*
04489	Otoshiro Gyogyo K. K.: *Otoshiro Maru No. 15.*

Certificate No.	Owner/operator and vessels
04793	Snam S. P. A.: *Agip Ravenna.*
05098	Esso Tankers, Inc.: *Esso Africa.*
05432	Lloyd Triestino-Societa' Per Azioni Di Navigazione: *Esquilino, Viminale.*
05437	The Dow Chemical Company: *Ett 109.*
05520	Union Carbide Corporation: *USL–610, USL–611.*
05577	Far-Eastern Shipping Company: *Kapitan Milovzorov.*
05578	Baltic Shipping Company: *Gerakl.*
05661	Mike Hooks, Inc.: *E. Stroud, Gayle.*
05775	Good Luck Shipping Company, Ltd.: *Good Commander.*
05848	Navimex S.A. de C. V.: *Rio Yaqui, Rio Tuxpan.*
06246	Pam Shipping Ltd.: *Stolt Idun.*
06248	Commercial Corporation "Sovrybflot": *Mys Prokofieva.*
06549	Compagnie Marocaine de Navigation: *Anwar.*
06919	General Shipping Company, Inc.: *General Valdes.*
07153	Petroleas Del Mediterraneo: *Alvaro de Bazan.*
08022	Nissel Shipping Co., Ltd.: *Zuisei Maru.*
08617	Fairmont Enterprises Ltd.: *Helindas, Octa, Penta, Triumph, Trust.*
08884	Arctic Shipping Singapore (Pte.) Ltd.: *Toyo.*
09252	Ocean Victory Ltd.: *Ocean Dynamic.*
09280	Rickmers-Linie KG: *Peter Rickmers.*
09315	Kaigai Gyogyo K. K.: *Sea Bird No. 31.*
09378	D.R.D. Importers, Ltd.: *Sealane.*
09418	Gudmundur A. Gudmundsson Ltd.: *Isborg.*
09481	Scheepvart Maatschappij Saba N.V.: *Veronica.*
09580	Tianna Shipping Co. Ltd.: Great Lakes.
09581	Eastgate Shipping Company Limited: *Bristol Lake.*
09601	Foster Shipping Co. Ltd.: *Lumber Trader.*
09720	M/S Supreme Inter Ocean Lines S.A.: Sati Rani.
09772	Tae Chang Fisheries Co. Ltd.: *Parto No. 85.*
09782	South Arctic Shipping Co., Ltd.: *Atlantic Baroness.*
09785	San Diego Transportation Company: *415.*
09797	Bohol Shipping S. A.: *Zamboanga.*
09818	Alaska Output Transportation Association Inc.: *Pelican.*
09908	Freight Chartering Co. Ltd.: *Insulaner, Marianne, Westridge.*
09818	Alaska Outport Transportation
09973	Rederiet Junior VII: *Junior Lotte.*
09998	Partenreederei M/S "Stephan Reith": *Stephan Reith.*
10001	Octonia Shipping Co. S.A.: *Kefalonia Sky.*
10012	Southhampton Navigation Corporation: *Dinos M.*
10016	Yen Yen Shipping Co. S.A.: *Hachiman.*
10023	United Shipping Co. Ltd.: *Del Mar, Del Sur, El Zorro.*
10027	Garland Maritime Co., S.A.: *Nancy Moon.*
10029	Eastern Glory Marine Corporation S.A.: *Azuma Gloria, Gloria Fortuna, Gloria Suerte.*
10030	Samyang Shipping Co., Ltd.: *Ocean Dragon.*
10031	County Ships Ltd.: *Stirling Brook.*
10035	Crystal Steamship Company S.A.: *Crystal.*
10038	Pel-Lyn Godager Company: *Dixilyn 260, Dixilyn 370.*
10041	Toa Shipping Agencies, Ltd.: *Sun Deneb.*
10042	Oyang Fisheries Co. Ltd.: *Oyang Ho No. 71.*
10043	Alton Steamship Company, Inc.: *Tex.*
10047	Elona Maritime Corporation S.A. Panama: *Elona.*
10050	Stephenville Shipping Limited: *Sandy Point No. 1.*
10053	Marquimar Motorship Corporation: *Marquise.*
10056	Societe Europeenne de Courtage Et d'Affretement Maritimes: *La Begude.*
10057	South Adriatic Shipping Co. Inc.: *Archangelos.*
10059	Petter K. Saevik & Sonner A/S & Co.: *Kings Star.*
10060	Marardor Naviera S.A. Panama: *Aristolaos.*
10062	Gala Shipping Company Inc.: *World Trophy.*
10063	Ho Shun Shipping S.A.: *Ho Shin.*
10064	Koyo Kaiun Kabushiki Kaisha: *Komei Maru.*
10065	San Shin Navigation Co. Ltd.: *Atlantic Neptune, Sanshin Victory, Sanshin Pioneer, Sanshin Pearl, Sanshin Star, Far East Friendship.*
10066	Suruga Kaiji Kabushiki Kaisha: *Sanyo Maru, Tenkei Maru No. 2.*
10067	Thomesto Oy: *Finntimber.*
10068	United Caribbean Lines, Inc.: *Mar Freeze.*
10069	United Trans Caribbean Navigation, Inc.: *Ultra Freeze.*
10070	Inter Pacific Transport, Inc.: *Great River.*
10074	Pacific Bulk Transport Limited: *Andros Castle.*
10075	Orient Bulk Transports Limited: *Andros Island.*
10076	Ostlandets Skoleskib: *Christian Radich.*
10078	Dalei Shipping Co. Ltd.: *Sun Freesia.*
10079	Panoceanos Armadora S.A. of Panama: *Erinio.*
10081	Chelsea Compania Naviera S.A.: *Aegis Cosmic.*

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–11337 Filed 4–29–75;8:45 am]

[No. 75–12]

CRESTLINE SUPPLY CORP. V. THE CONCORDIA LINE AND BOISE-GRIFFIN STEAMSHIP CO., INC.

Filing of Complaint

APRIL 24, 1975.

Notice is hereby given that a complaint filed by Crestline Supply Corporation against The Concordia Line and Boise-Griffin Steamship Co., Inc., was served April 24, 1975. The complaint alleges violation of section 18(b) (3) of the Shipping Act, 1916 by virtue of assessment of rates for certain items and routes in excess of published tariffs.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–11336 Filed 4–29–75;8:45 am]

GREATER BATON ROUGE PORT COMMISSION AND BATON ROUGE MARINE CONTRACTORS, INC.

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 NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old 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 May 19, 1975. 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.

Notice of agreement filed by:

George Mathews, General Counsel
Greater Baton Rouge Port Commission
Post Office Box 3177
Seventh Floor, Raymond Building
Baton Rouge, Louisiana 70801

Agreement No. T–3080, between the Greater Baton Rouge Port Commission (Port) and Baton Rouge Marine Contractors, Inc., (BRMC), provides for the Port's lease to BRMC of a gantry crane to be used solely for the handling, loading or unloading of cargo at the Port's General Cargo Wharf No. 1 in West Baton Rouge Parish, Louisiana. BRMC shall use the crane in conducting its own stevedoring business as well as in connection with the operations of other stevedoring firms at the Port's General Cargo Wharf No. 1. As compensation, the Port shall receive a monthly rental of $1100.00. In operating the crane for the account of other stevedoring firms, BRMC shall assess, collect and retain

charges therefrom, all subject to the Port's approval.

By Order of the Federal Maritime Commission.

Dated: April 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-11331 Filed 4-29-75;8:45 am]

NORTH ATLANTIC BALTIC FREIGHT CONFERENCE

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 NW, Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old 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 May 19, 1975. 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.

Notice of agreement filed by:

Howard A. Levy, Esquire
Suite 727
17 Battery Place
New York, New York 10004

Agreement No. 7670-13, among the parties to the above-named agreement is an agreement to amend Article I of the subject agreement by adding a new paragraph thereto (1) authorizing the North Atlantic Baltic Freight Conference to become a single party member of the Canadian-American Working Arrangement, Agreement No. 10090, and (2) providing for Canadian Conference carriers to become Associated Members subject to the conditions set forth therein.

By Order of the Federal Maritime Commission.

Dated: April 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-11332 Filed 4-29-75;8:45 am]

SCANDINAVIA BALTIC/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

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, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old 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 May 19, 1975. 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 violaion 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.

Notice of agreement filed by:

Howard A. Levy, Esquire
Suite 727
17 Battery Place
New York, New York 10004

Agreement No. 9982-5, among the parties to the above-named agreement, is an agreement to amend Article II of the subject agreement by adding a new subparagraph 6 thereto (1) authorizing the Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference to become a single party member of the Canadian-American Working Arrangement, Agreement No. 10090 and (2) providing for Canadian Conference carriers to become Associated Members subject to the conditions set forth therein.

By order of the Federal Maritime Commission.

Dated: April 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-11333 Filed 4-29-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. E-8855 and E-9037]

BOSTON EDISON CO.

Postponement of Hearing

APRIL 23, 1975.

On April 21, 1975, the Towns of Norwood, Concord, and Wellesley jointly filed a motion to postpone the hearing date fixed by order issued July 12, 1974, as most recently modified by notice issued April 15, 1975, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the hearing date in the above matter is postponed until April 30, 1975, at 10 a.m. (e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11263 Filed 4-29-75;8:45 am]

[Docket No. CI75-603]

CLINTON OIL CO.

Application

APRIL 23, 1975.

Take notice that on April 10, 1975, Clinton Oil Company (Applicant), Suite 645A, 300 West Douglas, Wichita, Kansas 67202, filed in Docket No. CI75-603 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), from the Benson Field, Pawnee County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell an estimated monthly volume of 9,420 Mcf of gas to Kansas-Nebraska at the national rate prescribed in § 2.56a of the Commission's general policy and interpretations (18 CFR 2.56(a). Applicant states that such rate is 41.9986 cents per Mcf at 14.65 psia, including 8.7244 cents per Mcf downward Btu adjustment and subject to tax reimbursement.

Applicant states that the subject gas supply was first dedicated to intrastate sales on September 18, 1974, pursuant to a contract between Applicant and Kansas-Nebraska dated June 28, 1974. Applicant explains that it recently learned that the Commission ruled on March 28, 1975, in Docket No. CP74-23 that said "intrastate" sale was subject to the Commission's jurisdiction. Accordingly, Applicant requests Commission authorization to make the subject sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1975, 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.

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 Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11264 Filed 4-29-75;8:45 am]

[Docket No. RP73-65; PGA75-6a]

COLUMBIA GAS TRANSMISSION CORP.

Filing of Tariff Sheets

APRIL 23, 1975.

Take notice that Columbia Gas Transmission Corporation (Columbia), on April 16, 1975, tendered for filing changes in its FPC Gas Tariff, Original Volume No. 1, to be effective on April 1, 1975.

Columbia states that the purpose of the revised tariff sheets is to comply with the Commission's order of April 1, 1975, in this proceeding. Revised tariff sheets to be effective April 1, 1975, have been adjusted to reflect (1) the elimination of Columbia's proposed rate increases to be effective February 6, 1975, and March 3, 1975, which were rejected by Commission order dated February 11, 1975, and March 24, 1975, in Docket No. RP74-82; (2) the appropriate adjustment pursuant to the Commission order dated February 28, 1975, at Docket No. RP73-65; and (3) the appropriate pipeline supplier rate levels.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11265 Filed 4-29-75;8:45 am]

[Docket No. RP75-91]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in Rates and Charges

Take notice that Consolidated Gas Supply Corporation (Consolidated), pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations thereunder, tendered for filing on April 16, 1975, proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 to become effective on June 1, 1975.

The proposed rate changes would increase Consolidated's revenues from jurisdictional sales and services by $20.5 million based on the twelve months ended December 31, 1974, adjusted for known changes for a nine-month period through September 30, 1975. $8.8 million of the total increase reflects supplier rate increases.

Consolidated states that the increased rates are required to recoup, inter alia, increased cost of transportation of gas by others, increased cost of capital, increases in capital expenditures, and increases in operating expenses. The rates proposed include an overall rate of return of 10.50 percent. The filing also reflects a continuing decline in Consolidated's gas supply with a consequent reduction in annual sales volumes. Consolidated also eliminated full cost accounting for unsuccessful wells on leases acquired after October 7, 1969, and provided for the normalization of deferred taxes relating to intangible drilling costs on leases acquired prior to October 8, 1969. Depreciation of transmission facilities located in the "Southern States" area of the United States is proposed to be changed from the present rate of 4 percent to a unit of production method. Further, Consolidated states that the proposed rates do not include the appropriate surcharge or surcharge credit as provided by its purchase gas adjustment clause. At such time as the increased rates are to become effective Consolidated will make the appropriate filing to reflect the applicable surcharge adjustment in effect at that time. Additionally, Consolidated submitted Pro Forma tariff sheets containing provisions that would authorize it to include in its current rates changes in rate base reflecting construction work in progress on major new supply projects. Consolidated does not propose to make such tariff sheets effective prior to a Commission order approving them. Finally, Consolidated asserts that Statement P will be filed within fifteen days of this filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protests with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 16, 1975. 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 wth the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11266 Filed 4-29-75;8:45 am]

[Docket No. CP75-291]

EL PASO NATURAL GAS CO.

Application

APRIL 23, 1975.

Take notice that on April 9, 1975, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP75-291 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and emergency operation, as necessary, of certain interconnection facilities between the transmission systems of El Paso and Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application indicates that El Paso, Transwestern, and Southwest Gas Corporation (Southwest) have entered into a letter agreement dated December 30, 1974, wherein El Paso and Transwestern have agreed to establish an interconnection of facilities to provide emergency back-up service to Southwest for the protection of deliveries made by El Paso to Southwest for Southwest's domestic and commercial customers in southern Nevada. El Paso states that such arrangements are to be provided through Transwestern's system in the event of a force-majeure occurrence at the Arizona-Nevada border causing an unavoidable interruption of deliveries to Southwest by El Paso. It is stated that under these emergency delivery arrangements, Southwest will pay El Paso for all gas received from Transwestern according to the provisions of the existing service agreement then in effect between El Paso and Southwest; and such emergency deliveries made by Transwestern, not to exceed 60,000 Mcf daily, will be made without charge to El Paso. El Paso states that it will deliver within 60 days equal

volumes to Transwestern at the interconnection point proposed to be established. El Paso proposes to construct, own, and operate approximately 20 feet of 12¾-inch O.D. pipeline and one tap and valve assembly necessary to connect its system with Transwestern's system in Mohave County, Arizona, at an estimated cost of $19,100. El Paso states that it will be reimbursed by Southwest, for the actual cost incurred in installing such facilities.

The application indicates that El Paso, Transwestern and Southwest acknowledge that such emergency service arrangements shall not be available to Southwest as a vehicle to obtain more natural gas on any day than it is otherwise entitled to receive from El Paso under the curtailment provisions in effect under El Paso's FPC Gas Tariff, Original Volume No. 1, or superseding tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 15, 1975, 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 authorization 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 unnecesary for El Paso to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11267 Filed 4-29-75;8:45 am]

[Docket No. E-9387]

KANSAS CITY POWER & LIGHT CO.

Tariff Change

APRIL 23, 1975.

Take notice that Kansas City Power & Light Company (KCPL) on April 16, 1975, tendered for filing proposed changes in its FPC Electric Tariff, Supplement No. 3 to FPC Rate Schedule No. 56 covering Requisitioned Power and Accompanying Energy to the City of Independence, Missouri (City) under Rate Schedule C-MPA-1 of the Municipal Participation Agreement dated July 12, 1965. KCPL states that the City now desires to purchase from KCPL during the period June 1, 1975 through May 31, 1976, a supply of 18 Mw of firm power service to augment the Citys' own municipal generation and other power resources.

The proposed changes are reflected in an agreed Rate Schedule C-MPA-2 for Requisitioned Power and Accompanying Energy. KCPL proposes to cancel and terminate Rate Schedule C-MPA-1 and to make Rate Schedule C-MPA-2 effective as of June 1, 1975. KCPL states that the rate and charges proposed in Rate Schedule C-MPA-2 are comparable to those for 161 Kv Wholesale Firm Power Service as set out in the Settlement Agreement approved September 4, 1974, by the FPC in Docket No. E-8365.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11268 Filed 4-29-75;8:45 am]

[Docket No. E-9363]

KENTUCKY UTILITIES CO.

New Delivery Point

APRIL 23, 1975.

Take notice that no April 7, 1975, the Kentucky Utilities Company (KUC) tendered for filing a change in its Rate Schedule FPC No. 82 to include an additional delivery point, to be known as the Shell Oil Pump delivery point, as requested by the Jackson Purchase RECC (Jackson). According to KUC, the new delivery point is in keeping with the contract between KUC and Jackson, specifically section 4; and KUC expects service to begin on or about May 15, 1975, which it requests as the effective date.

KUC states that no reasonable billing estimates can be made since no schedule for the pumping operation is available. KUC further states that copies of the tendered filing have been sent to Jackson and the Kentucky Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11269 Filed 4-29-75;8:45 am]

[Docket No. CP73-147]

MICHIGAN WISCONSIN PIPE LINE CO., ET AL.

Petition To Amend

APRIL 23, 1975.

Take notice that on April 11, 1975, Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, and Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1348, Kansas City, Missouri 64141, filed in Docket No. CP 73-147 a petition to amend the order of the Commission issued in said docket on April 6, 1973, as amended July 26, 1973, January 4, 1974, and February 12, 1975, pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of time for the previously authorized transportation of gas by Panhandle and Trunkline for Mich Wis for a period of one year, to eliminate the previously authorized deferred exchange of gas between Mich Wis and Trunkline, and to authorize an increase in the transportation charge collected by Trunkline and Panhandle for gas transported for Mich Wis from 20 cents per Mcf to 21.5 cents per Mcf, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

The petition states that by the original authorization in the instant docket Mich Wis was to deliver exchange gas to Trunkline during the period from November 14, 1972, to October 31, 1973, and Trunkline and Panhandle were to transport and deliver, on a best effort basis, transportation gas for Mich Wis' account to Mich Wis' market area during the same period. By the order issued July 26, 1973, the Commission approved a new point for delivery of gas to Mich Wis. By the January 4, 1974, and February 12, 1975, orders the Commission approved extensions of time up to and including April 30, 1975, for the deliveries of gas; and by the January 4, 1974, order the Commission approved an increase of the volumes of exchange gas to 8 million Mcf.

The petition further states that Trunkline has received approximately 3.2 million Mcf of exchange gas and 42.8 million Mcf of transportation gas through February 1975.

By agreement dated April 4, 1975, the parties have agreed to extend the period to and including April 30, 1976, for deliveries to Trunkline of the transportation gas by Mich.-Wis. and the transportation and delivery thereof by Trunkline and Panhandle for the account of Mich.-Wis. The agreement also modifies the four percent fuel shrinkage provision in that at Trunkline's option volumes may be delivered for Mich.-Wis' account in excess of 96 percent of the transportation gas volumes delivered to Trunkline, and such excess volumes shall be deemed to be a redelivery of exchange gas by Mich.-Wis. to Trunkline. The agreement finally provides for an increase in the transportation charge by Panhandle and Trunkline to 21.5 cents per Mcf.

Petitioners request modification of their certificate authorization to conform to the April 4, 1975, agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 14, 1975, 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.75-11270 Filed 4-29-75;8:45 am]

[Docket No. CP75-296]

MOUNTAIN FUEL SUPPLY CO.

Application

APRIL 23, 1975.

Take notice that on April 11, 1975, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP75-296 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange natural gas with Northwest Pipeline Corporation (Northwest) and to install and connect metering facilities in connection with such exchange and the purchase of natural gas from Northwest, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant states that Northwest controls certain natural gas volumes in the Barrel Spring area of Carbon County, Wyoming, estimated at 4,000 Mcf per day, and that such gas will be brought into the market at the lowest reasonable cost to the ultimate consumer if Applicant and Northwest are authorized to perform the exchange and purchase as proposed herein.

Pursuant to a February 17, 1975, gas purchase, transportation and exchange agreement, Northwest will deliver into Applicant's 10-inch pipeline in or near section 3, Township 12 North, Range 93 West, in Carbon County approximately 4,000 Mcf per day of natural gas. Applicant will have the option to purchase up to 25 percent of the volumes delivered by Northwest. Applicant will purchase from Northwest under the same terms and conditions as Northwest purchases from producers. In addition to such cost Applicant shall pay Northwest for Northwest's cost of service, including a reasonable return on investment for gathering, compression, dehydration, necessary treating for removal of impurities, and for transportation of the gas purchased by Applicant from the source of supply to the point of delivery to Applicant. The initial price for this service has been set at 16½ cents per Mcf.

Applicant proposes to deliver, pursuant to the agreement, the remainder of the gas delivered by Northwest to Northwest at an existing delivery point where the facilities of the two companies intersect west of Green River, Wyoming. For this service Northwest is to pay Applicant 4 cents per Mcf.

In order to receive the volumes of gas from Northwest Applicant proposed to install and connect metering facilities to an existing 4-inch tap on its 10-inch pipeline at the delivery point west of Baggs, Wyoming. The estimated cost of these facilities is $11,900.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 14, 1975, 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 Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11271 Filed 4-29-75;8:45 am]

[Docket Nos. CP75-298, CP75-304, CP75-305, CP75-303, CP75-307, CP75-308]

NORTHERN NATURAL GAS CO., ET AL.

Applications

APRIL 23, 1975.

Take notice that certain applications have been filed pursuant to section 7(c) of the Natural Gas Act for the purpose of enabling Northern Natural Gas Company (Northern) to deliver natural gas to Michigan Wisconsin Pipe Line Company (Mich Wis) during the summer period of 1975 in order to provide Northern with peak-day gas during the 1975-1976 heating season and to conserve gas Northern expects to have available during the summer of 1975 in excess of its customers' anticipated requirements, all as more fully set forth in the applications, which are on file with the Commission and open to public inspection.

Northern, 2223 Dodge Street, Omaha, Nebraska 68102, filed an application in Docket No. CP75-298 on April 11, 1975, and filed applications in Docket Nos. CP75-304 and CP75-305 on April 14, 1975.

Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, filed an application in Docket No. CP75-303 on April 14, 1975.

Great Lakes Gas Transmission Company (Great Lakes), One Woodward Avenue (2100 Buhl Building after May 1, 1975), Detroit, Michigan 48226, filed an application in Docket No. CP75-307 on April 15, 1975.

Mich Wis, One Woodward Avenue, Detroit, Michigan 48226, filed an application in Docket No. CP75-308 on April 16, 1975.

According to the applications, the following is a summary of Northern's obligations which are in addition to customer requirements under contract to be delivered during the summer of 1975 to Mich Wis:

2.8 million Mcf.—One year leased storage agreement with Mich Wis to implement which authorization is requested in Docket No. CP75-237 by Northern;

4.2 million Mcf.—First increment of a long-term storage agreement with Mich Wis to implement which authorization is requested in Docket No. CP75-237 by Northern and in Docket No. CP75-182 by Mich Wis.

2.1 million Mcf.—Cushion gas in support of the 4.2 million Mcf of cycle gas referred to above.

Northern states that if it is not able to complete the above arrangements related to providing peak-day gas during the 1975–1976 heating season, it will be 110,000 Mcf per day short of meeting its firm obligations.

In addition to the obligations listed above, Northern states it has entered into an agreement with Mich Wis providing for the delivery of an additional 10.4 million Mcf of natural gas volumes pursuant to a deferred exchange agreement which is the subject of Northern's application in Docket No. CP75–304 and Mich Wis' application in Docket No. CP75–308.

Northern further states that it has requested in Docket No. CP75–21 authority to construct and operate certain facilities so as to increase the delivery capacity on its system by 80,000 Mcf per day. This construction, according to Northern, will accommodate, if it is in service by July 1, 1975, the delivery of approximately 8 million Mcf of natural gas towards Northern's 1975 summer period obligations. On March 13, 1975, the Commission issued a temporary certificate for the construction of the proposed facilities.

In order to accommodate further the deliveries to Mich Wis, Northern has entered into agreements with Natural and Great Lakes to transport gas for Northern's account to Mich Wis.

By Northern's application in Docket No. CP75–298 and Natural's application in Docket No. CP75–303, authority is requested to permit Northern to deliver to Natural up to 16 million Mcf for further delivery to Mich Wis. Natural will transport up to 90,000 Mcf per day during April 1975, up to 145,000 Mcf per day during May 1975, and up to 200,000 Mcf per day thereafter until November 1, 1975. Deliveries will be made to Natural at an existing interconnection of the respective pipeline systems in Mills County, Iowa. Redeliveries to Mich Wis will be made at one or more existing points near Woodstock and Joliet, Illinois.

The proposed charge for this service is 12.50 cents per Mcf. Northern, it is proposed, will deliver to Natural a quantity of gas equal to an additional 3 percent of the quantity of gas delivered for transportation, which gas shall be used as fuel by Natural.

Northern in its application in Docket No. CP75–298 proposes to remove an existing 12-inch orifice run for relocation in the same proximity and to install a new 12-inch orifice run in parallel at the proposed delivery point to Natural. The estimated cost of these facilities is $107,900. In addition Northern is installing an 8-inch tie-over line from its 30-inch "D" line to the 16-inch interconnecting line to obtain more efficient and economical operation of existing facilities, for the purpose of accommodating the volumes to be delivered to Natural. The tie-over line, according to Northern, is in part the subject of its application pending in Docket No. CP75–243. Northern states it will make the necessary modification of its proposal in Docket No. CP75–243 at the appropriate time.

Northern's transportation agreement with Great Lakes is the subject of Northern's application in Docket No. CP75–305 and Great Lakes' application in Docket No. CP75–307. Northern proposes to deliver to Great Lakes at an existing point of interconnection near Carlton, Minnesota, up to 4 million Mcf of gas during the summer period of 1975. Great Lakes will redeliver this gas to Mich Wis for Northern on a best efforts basis at an existing point of interconnection near Farwell, Michigan. The deliveries will be made at a rate not to exceed 75,000 Mcf of gas per day from April 1, 1975, through September 3, 1975, according to the applicable agreement.

The price for Great Lakes' service is proposed to be 6.4 cents per Mcf. In addition Northern is to furnish and deliver to Great Lakes gas to be used as compressor fuel in the amount of eleven percent of the volume to be transported. No new facilities are proposed.

In its application in Docket No. CP75–304 Northern requests authorization to deliver up to 10.4 million Mcf of gas to Mich Wis at the Joliet, Woodstock and Farwell points mentioned above and at an existing point of interconnection of Northern's and Mich Wis' system near Janesville, Wisconsin, during the period April 27, 1975, through September 27, 1975. Mich Wis' application in Docket No. CP75–308 requests authorization for Mich Wis' part of the arrangement, whereby Mich Wis will deliver during the period March 27, 1977, through September 27, 1977, or during the same period of 1978, or both, equivalent volumes of gas to Northern at the existing points of interconnection of the systems of Great Lakes and Northern near Carlton and Grand Rapids, Minnesota, and Wakefield, Michigan. Great Lakes states in its application in Docket No. CP75–307 that it will apply for the necessary authorization in a timely manner.

The applications in Docket No. CP75–304 and CP75–308 further state that Mich Wis has agreed, subject to the development of certain storage fields and to the obtaining of necessary approvals, to provide up to 25 million Mcf of leased storage service to Northern over the next several years. In the event that Mich Wis obtains the necessary approvals and the storage fields are developed, those volumes of gas which have not been redelivered to Northern by Mich Wis will be used by Mich Wis for Northern's account as cushion gas in support of the long-term storage service to be provided, according to the applicable agreement.

No charge will be assessed for gas delivered and redelivered under the terms of the applicable agreement, and no new facilities are proposed.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 14, 1975, 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, hearings will be held without further notice before the Commission on these applications if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that grants of the certificates are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearings are required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicants to appear or be represented at the hearings.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11272 Filed 4-29-75;8:45 am]

[Docket No. E-9383]

PUBLIC SERVICE CO. OF COLORADO

Tariff Change

APRIL 23, 1975.

Take notice that Public Service Company of Colorado, on April 11, 1975, tendered for filing proposed changes in its FPC Electric Service Tariff. The company states that the change proposed is service to one added customer, the City of Burlington, under an established rate, the Company's small wholesale rate.

The company characterizes this filing as an initial rate schedule and states that service under such schedule is expected to commence on or about May 15, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1975. 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.75-11273 Filed 4-29-75;8:45 am]

[Docket No. E-7742]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Compliance Filing

APRIL 23, 1975.

Take notice that on April 2, 1975, Public Service Company of New Hampshire (PSC), tendered for filing supplements to its rate schedules in purported compliance with Commission Opinion No. 720. The rate schedules are:

FPC No. 24	Concord Electric Company.
FPC No. 28	The Town of Ashland.
FPC No. 29	The New Hampton Village Precinct.
FPC No. 35	Exeter & Hampton Electric Company.
FPC Nos. 50 and 71.	The New Hampshire Electric Cooperative, Inc.
FPC No. 72	The Town of Wolfeboro.

PSC requests that the supplements, which relate to PSC's fuel adjustment clause, be allowed to become effective as of February 1, 1975. The filing also includes calculations of refund obligations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11274 Filed 4-29-75;8:45 am]

[Docket No. E-9386]

SOUTHWESTERN ELECTRIC POWER CO.

Proposed Cancellation

APRIL 23, 1975.

Take notice that Southwestern Electric Power Company (Southwestern) tendered for filing on April 17, 1975, a Notice of Cancellation which, according to Southwestern, cancels the letter agreement between Arkansas Power & Light Company (AP&L) and Southwestern dated June 4, 1973, effective date June 1, 1974, designated as Supplement No. 13 to Rate Schedule FPC No. 47.

Southwestern states that the letter agreement dated June 4, 1973 terminates by its terms on May 31, 1975 and is to be considered cancelled as of that date.

Southwestern states that notice of the proposed cancellation has been served upon AP&L.

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, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1975. 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.75-11275 Filed 4-29-75;8:45 am]

[Docket No. CP66-43, et al.]

TEXAS EASTERN TRANSMISSION CORP., ET AL.

Hearing on Staten Island, N.Y.

APRIL 23, 1975.

In the matter of Texas Eastern Transmission Corporation (Docket No. CP66-43), Eascogas LNG, Inc., et al (Docket No. CP73-47, et al), Distrigas Corporation, et al (Docket No. CP73-132, et al).

In accordance with the Commission's Order in the Texas Eastern proceeding, issued March 21, 1975, a hearing session is hereby scheduled to commence at 4 p.m. on May 19, 1975, at the Tottenville High School Auditorium, Delsius and Luton Avenues, Staten Island, N.Y. 10312. The Texas Eastern hearing will be held concurrently or immediately after the sessions in the Eascogas and Distrigas proceedings, as many of the parties are participants in all the above titled cases.

This session will cover submittals concerning the reinstitution of service at the existing Texas Eastern facilities on Staten Island, as well as the Distrigas proposed LNG tanks. Interested parties may make submittals in the form of unsworn statements of position or opinion which may be read or copied into the record in order to reflect the concerns of local citizens with the safety and environmental impacts of the project. However, the unsworn statements will be considered as opinions, but not as evidence in the proceeding, unless the submittals are made under oath and an opportunity is accorded all parties for cross-examination thereon. Sworn submittals, if any, should be mailed to the parties in the Texas Eastern case by May 9, 1975.

A viewing of the pertinent LNG sites and facilities is anticipated for the morning of May 20, 1975.

This notice is to be published in the FEDERAL REGISTER.

ALLEN C. LANDE,
NAHUM LITT,
Presiding Administrative Law Judges.

[FR Doc.75-11276 Filed 4-29-75;8:45 am]

[Docket No. RP72-64]

TEXAS GAS TRANSMISSION CORP.

Extension of Procedural Dates and Scheduling of Prehearing Conference

APRIL 23, 1975.

On April 18, 1975, Texas Gas Transmission Corporation filed a motion to extend the procedural dates fixed by order issued March 28, 1975, in the above-designated matter.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Prehearing Conference, May 1, 1975.
Service of Company's Testimony, May 26, 1975.
Service of Intervenor's Testimony, June 9, 1975.
Hearing, June 19, 1975 (10 a.m. e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc. 75-11277 Filed 4-27-75;8:45 am]

[Docket No. CP74-305]

TEXAS GAS TRANSMISSION CORP.

Application

APRIL 23, 1975.

Take notice that on May 29, 1974, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP74-305 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render storage service of natural gas in interstate commerce for Westvaco Corporation (Westvaco), a firm industrial customer of Applicant, for the period June 1, 1974, through March 31, 1975, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In order to allow Westvaco better to ensure its winter fuel supply when alternate fuel may not be available to it Applicant proposes to store for Westvaco up to 400,000 Mcf[1] (at 15.025 psia) of Westvaco's 1974 summer seasonal entitlement during the period June 1, 1974, through October 31, 1974, in Applicant's Midland Storage Field, Muhlenberg County, Kentucky, for delivery to Westvaco during the period November 1, 1974, through March 31, 1975. Applicant states that daily volumes either delivered into storage or delivered from storage shall

[1] Such volume may be reduced by 1/153 of such volume for each day after June 1, 1974, that Applicant has not received Commission authorization to render the proposed service. A temporary certificate was issued on June 14, 1974.

not exceed Westvaco's contract demand and that delivery of storage volumes to Westvaco during the 1974–75 winter heating season shall be at Applicant's discretion. Applicant further states that Westvaco shall pay for volumes delivered into storage as if they had been delivered to Westvaco's points of delivery under its natural gas service contract with Applicant and that Westvaco shall pay Applicant for the proposed storage service the sum of 13 cents per Mcf (15.025 psia). No new sales or facilities are proposed by the instant application.

Applicant claims that a similar service was tendered to all of Applicant's resale customers up to the volume of proposed curtailments for the 1974–75 winter heating season.

Applicant submits that the proposed service is in furtherance of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70) wherein the Commission has stated that it is the Commission's policy to protect adequate and reliable service insofar as present supplies and capabilities will permit.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 8, 1975, 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 Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11278 Filed 4-29-75;8:45 am]

[Docket No. E-9312]

UNION ELECTRIC CO.

Filing Service Schedules

APRIL 23, 1975.

Take notice that on March 6, 1975, Union Electric Company (Union) tendered for filing First Revised Service Schedules to the Interconnection Agreement dated February 18, 1972, between Central Illinois Public Service Company, Illinois Power Company and Union. The proposed effective date of the First Revised Schedules is May 1, 1975, and the revised schedules provide for the cancellation of the previous service Schedule dated February 18, 1972.

Union states that First Revised Service Schedule B, Emergency Service, has been modified to include return of equivalent energy as a third alternative basis of settlement in order to encourage the supplying party to be more readily agreeable to provide emergency energy during periods of fuel shortage or conservation of fuel. Union also states that First Revised Service Schedules C and F increase reservation charges for Maintenance Power Transactions and Short-term Non-Firm Power Transactions, respectively, from 40¢ per week per kilowatt to 45¢ per week per kilowatt. Finally, Union states that First Revised Schedule E revises the rate for Short-term Power from 50¢ per week per kilowatt to 55¢ per week per kilowatt.

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 NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 29, 1975. 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.75-11279 Filed 4-29-75;8:45 am]

[Docket No. RP75-30]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheets

APRIL 23, 1975.

Take notice that on April 17, 1975, United Gas Pipe Line Company (United) filed with the Federal Power Commission (Commission) as a part of its FPC Gas Tariff the following Tariff sheets:

First Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 4.

Original Volume No. 2

Second Revised Sheet No. 226.

Twenty-Fourth Revised Sheet No. 4 is being filed to replace Nineteenth Revised Sheet No. 4, which was filed in the Docket No. RP75-30 original filing, as well as Twenty-Third Revised Sheet No. 4, filed with the Commission on February 21, 1975 and which became effective on March 1 1975 in Docket No. RP72-133, PGA 75-2. Twenty-Fourth Revised Sheet No. 4 reflects modifications which include current gas cost and substitution of the surcharge reflected in United's February 21, 1975 PGA filing, which became effective on March 1, 1975.

Second Revised Sheet No. 226 is being filed pursuant to the provisions of the rate schedule to reflect a transportation rate equal to United's Northern Zone transmission cost of service in this proceeding.

A copy of the revised sheets are being mailed to United's jurisdictional customers and interested state commissions, and parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 5, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-11280 Filed 4-29-75;8:45 am]

OFFICE OF THE FEDERAL REGISTER

LIST OF ACTS REQUIRING PUBLICATION IN THE "FEDERAL REGISTER"

The basic provisions requiring or authorizing publication of documents in the FEDERAL REGISTER are contained in 5 U.S.C. 551–559 and 44 U.S.C. 1501–1511. This appendix lists the acts contemplated by 44 U.S.C. 1505(a)(3). Notice is hereby given that the Office of the Federal Register is amending the list of acts requiring the publication of documents in the FEDERAL REGISTER by adding to the list the following acts enacted in 1974:

Description of Act	*Citation*
Water resources development and preservation.	Public Law 93-251; 88 Stat. 43; 16 U.S.C. 460cc.
Fair Labor Standards Amendments of 1974	Public Law 93-259; 88 Sta. 61; 29 U.S.C. 213 note.
Federal Energy Administration Act of 1974	Public Law 93-275; 88 Stat. 101; 15 U.S.C. 766.
Wild and Scenic Rivers System	Public Law 93-279; 88 Stat. 123; 16 U.S.C. 1278.
Alcoholism and alcohol abuse	Public Law 93-282; 88 Stat. 131, 133, 139; 42 U.S.C. 4581, 4582, 21 U.S.C. 1175 note.
Energy Supply and Environmental Coordination Act of 1974.	Public Law 93-319; 88 Stat. 249, 256; 42 U.S.C. 1857c-10.
Congressional Budget and Impoundment Control Act of 1974.	Public Law 93-344; 88 Stat. 335, 336; 31 U.S.C. 1404.
National Research Act	Public Law 93-348; 88 Stat. 351; 42 U.S.C. 289l-1 note.
Legal Services Corporation Act of 1974	Public Law 93-355; 88 Stat. 387; 42 U.S.C. 2996g.
Social security benefits	Public Law 93-368; 88 Stat. 422; 42 U.S.C. 1382f.
Education Amendments of 1974	Public Law 93-380; 88 Stat. 610, 20 U.S.C. 246.
Housing and Community Development Act of 1974.	Public Law 93-383; 88 Stat. 663, 703, 711; 42 U.S.C. 1437f, 5406, 5414.
Solar Heating and Cooling Demonstration Act of 1974.	Public Law 93-409; 88 Stat. 1073; 42 U.S.C. 5506.
Boston National Historical Park Act of 1974	Public Law 93-431; 88 Stat. 1184; 16 U.S.C. 4102.
Energy Reorganization Act of 1974	Public Law 93-438; 88 Stat. 1242, 1253; 42 U.S.C. 5818, 5801 note.
Big Thicket National Preserve, Texas, establishment.	Public Law 93-439; 88 Stat. 1254, 1255, 1257; 16 U.S.C. 698, 698c.
Big Cypress National Preserve, Florida, establishment.	Public Law 93-440; 88 Stat. 1258, 1260; 16 U.S.C. 698f, 698l.
Federal Election Campaign Act Amendments of 1974.	Public Law 93-443; 88 Stat. 1265; 18 U.S.C. 608.
International claims settlements	Public Law 93-460; 88 Stat. 1386; 22 U.S.C. 1641e.
Harpers Ferry National Historical Park, West Virginia.	Public Law 93-466; 88 Stat. 1420; 16 U.S.C. 450bb.
National Park System, appropriation ceilings and boundaries.	Public Law 93-477; 88 Stat. 1448; 16 U.S.C. 495g-2.
Historic sites and national monuments	Public Law 93-486; 88 Stat. 1462 (not assigned U.S.C. classification).
Motor Vehicle and Schoolbus Safety Amendments of 1974.	Public Law 93-492; 88 Stat. 1471, 1474, 1475, 1481; 15 U.S.C. 1412, 1414, 1417, 1410a.
Federal deposit insurance, increase	Public Law 93-495; 88 Stat. 1503, 1505; 15 U.S.C. 78l.
Federal Fire Prevention and Control Act of 1974.	Public Law 93-498; 88 Stat. 1548; 15 U.S.C. 2218.
Export Administration Amendments of 1974	Public Law 93-500; 88 Stat. 1554; 50 U.S.C. app. 2404.
Public information, publication of indexes	Public Law 93-502; 88 Stat. 1561; 5 U.S.C. 552.
Vocational rehabilitation services	Public Law 93-516; 88 Stat. 1623, 1627; 20 U.S.C. 107, 107d-2.
Safe Drinking Water Act	Public Law 93-523; 88 Stat. 1663; 42 U.S.C. 300g-1.
Antitrust Procedures and Penalties Act	Public Law 93-528; 88 Stat. 1706, 1707; 15—U.S.C. 16.
Point Reyes National Seashore, California, additional lands.	Public Law 93-550; 88 Stat. 1744; 16 U.S.C. 459c-1.
Cuyahoga Valley National Recreation Area, Ohio, establishment.	Public Law 93-555; 88 Stat. 1785; 16 U.S.C. 460ff-1.
Emergency Jobs and Unemployment Assistance Act of 1974.	Public Law 39-572; 88 Stat. 1785; 16 U.S.C. 966.
Emergency Unemployment Compensation Act of 1974.	Public Law 93-572; 88 Stat. 1870; 26 U.S.C. 3304 note.
Federal Nonnuclear Energy Research and Development Act of 1974.	Public Law 93-577; 88 Stat. 1891, 1893; 42 U.S.C. 5908, 5912.

Description of Act	Citation
Privacy Act of 1974	Public Law 93-579; 88 Stat. 1899, 1900, 1904; 5 U.S.C. 552a.
General Accounting Office Act of 1974	Public Law 93-604; 88 Stat. 1961; 49 U.S.C. 66 note.
Canaveral National Seashore, Florida, establishment.	Public Law 93-626; 88 Stat. 2122; 16 U.S.C. 459j.
Federal Energy Administrtaion Act of 1974	Public Law 93-275; 88 Stat. 101; 15 U.S.C. 766.
Deepwater Port Act of 1974	Public Law 93-627; 88 Stat. 2131, 2132, 2133, 2144; 33 U.S.C. 1504, 1517.
Magnuson-Moss Warranty—Federal Trade Commission Improvement Act.	Public Law 93-637; 88 Stat. 2186, 2196; 15 U.S.C. 2302, 57a.
Indian Self-Determination and Education Assistance Act.	Public Law 93-638; 88 Stat. 2212, 2216; 25 U.S.C. 450k, 458c.
National Health Planning and Resources Development Act of 1974.	Public Law 93-641; 88 Stat. 2231; 42 U.S.C. 300l.
Headstart, Economic Opportunity, and Community Partnership Act of 1974.	Public Law 93-644; 88 Stat. 2304; 42 U.S.C. 2928f.

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of an Information Circular intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on April 24, 1975. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collecting of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC form are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed form, comments (in triplicate) must be received on or before May 19, 1975, and should be addressed to Mr. Monte Canfield, Jr., Director, Office of Special Programs, United States General Accounting Office, 425 I Street NW., Washington, D.C. 20548.

Further information may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

FEDERAL MARITIME COMMISSION

Request for clearance of an extension (no change), of Form FMC-9, Information Circular. This form is used in eliciting information concerning firms regulated by the Commission. The information furnished assists the Commission in its daily operation through knowledge of those it regulates. Responses are voluntary and the burden is estimated at three hours per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.75-11296 File 4-29-75;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-73]

DRAFT REPORT ON CONCEPTS AND PRINCIPLES WHICH SHOULD UNDERLIE THE FORMULATION OF AN INTERNATIONAL COMMODITY CODE

Release for Public Views

Notice is hereby given that the United States International Trade Commission is releasing for public comment a draft report on the concepts and principles which should underlie the development of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade. The draft report is being released in connection with Commission Investigation No. 332-73, initiated on February 4, 1975, in accordance with section 608(c) (1) of the Trade Act of 1974.

The draft report discusses the need for a comprehensive international commodity code, sets forth the concepts and principles which should underlie its formulation, and suggests methods for its development and maintenance.

The Commission solicits from all interested parties their views on the study, including constructive comments and criticism on the factual, analytical, and other aspects of the draft report. Interested parties are urged to submit their written statements at the earliest practicable date, but, to be assured of consideration, not later than May 19, 1975. A signed original and nineteen (19) true copies should be submitted.

By order of the Commission.

Issued: April 24, 1975.

KENNETH R. MASON,
Secretary.

[FR Doc.75-11217 Filed 4-29-75;8:45 am]

[AA 1921-143]

TAPERED ROLLER BEARINGS AND CERTAIN COMPONENTS THEREOF FROM JAPAN

Statement of Reasons for Negative Determination of Commissioner Leonards

JANUARY 23, 1975.

NOTE: The following statement was omitted when the original document was published at 40 FR 4366, January 29, 1975.

Investigation No. AA1921-142 was instituted September 11, 1974, on the basis of advice of September 4, 1974, from the Department of the Treasury that tapered roller bearings from Japan are being, or are likely to be, sold in the United States or elsewhere at less than fair value (LTFV). Under section 201(a) of the Antidumping Act, 1921, as amended, the Commission must determine within 3 months from the time of the determination of Treasury whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

On October 23, 1974, the Commission was advised by letter from Assistant Secretary of the Treasury David R. Macdonald of a "clarification" with respect to Treasury's September 4 LTFV determination on tapered roller bearings from Japan. Assistant Secretary Macdonald's letter and an enclosed notice published in the FEDERAL REGISTER of October 29, 1974, both termed the October 23 advice as being a clarification of the September 4 determination. The letter and notice stated in effect that the September 4 Treasury determination was meant to include certain components of tapered roller bearings, specifically "inner races or cone assemblies and outer races or cups, exported to and sold in the United States, either as a unit or separately."[1]

However, the Commission decided not to treat the October 23 letter and notice as a clarification of the September 4 Treasury determination but rather as an amendment by Treasury of its previous advice or in effect as a new determination by Treasury. Thus, the Commission on October 24, 1974, terminated investigation No. AA1921-142 without a determination and instituted a new investigation, No. AA1921-143, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of tapered roller bearings, including inner race or cone assemblies and outer races or cups, exported to and sold in the United States, either as a unit or separately, from Japan, which are being, or are likely to be, sold at less than fair value.

Threshold questions. Questions can be raised whether the Commission can terminate without a determination an investigation under the Antidumping Act and whether it can institute a new investigation based, according to the Treasury advice, not on a new determination of sales at less than fair value but rather on a clarification of a previous determination of sales at less than fair value. Further, if Treasury did not make a new determination on October 23 but merely clarified its September 4 determination, is it not required of the Commission to make its determination with respect to injury within 3 months of September 4, 1974, or by December 4, 1974? A majority of the Commission has concluded otherwise; ergo, this January 23 report of its determination in investigation No. AA1921-143.

Negative determination. My determination in this investigation is in the negative; that is, an industry in the United States is not being or is not likely to be injured, or is not prevented from

[1] The text of Mr. Macdonald's letter received by the Commission on October 23, 1974, and the notice published in the FEDERAL REGISTER are attached to this statement.

being established,[2] by reason of the importation into the United States from Japan of tapered roller bearings, including inner race or cone assemblies and outer races or cups, exported to and sold in the United States, either as a unit or separately, sold or likely to be sold at less than fair value.

Statutory criteria. Before an affirmative determination can be made under the Antidumping Act, 1921, as amended, each of two conditions must be fulfilled. First, there must be injury or a likelihood of injury to an industry in the United States. Second, the injury or likelihood of injury to an industry in the United States must be by reason of the importation into the United States of merchandise which Treasury determines is being, or is likely to be, sold at LTFV. In the instant investigation, while there is little, if any, evidence of the first condition being satisfied, that is, of there being injury or likelihood of injury, in any event, the second condition is not met, that is, any injury or likelihood thereof that is conjured up cannot be linked causally to imports sold or likely to be sold at less than fair value.

Industry and market. In looking at the question of injury, I have concentrated on that industry—the U.S. facilities devoted to the production of the articles covered by the notice of investigation—and the U.S. market—the market for 4-inch and under tapered roller bearings, particularly for the high volume, eight part numbers found by Treasury to have been sold at less than fair value—where the impact of the LTFV merchandise was likely to be the heaviest.

Injury. With regard to the first statutory criterion enumerated above, I find scant evidence of injury to the affected industry, even in the most relevant market. Domestic producers' aggregate shipments increased each year during the period 1970–73, which encompassed the period during which Treasury found LTFV sales—July-December 1973. By 1972 the domestic industry was operating at nearly full capacity; in that year shortages of bearings began to develop in the United States and throughout the world. During the next two years, which included the dumping period, the bearing shortage was so acute in this market that lead times quoted by domestic suppliers increased to as long as 104 weeks. Domestic producers' exports as a share of their production increased during those years, which exacerbated the shortage in the United States. In many cases domestic suppliers had to decline offers for new business.

Throughout this period the prices of both domestic and Japanese bearings increased; however, the spread between the comparable domestic and Japanese articles continually narrowed as the prices of Japanese bearings rose at a more rapid rate. Finally, Timken, the dominant domestic supplier, experienced handsome profits throughout the period reviewed. All of the foregoing indicators suggest to me that the overall condition of the industry during that period was extremely healthy.

Likelihood of injury. In spite of the recent downturn in the United States economy, it does not follow that the domestic tapered roller bearing industry is likely to be injured. Although domestic suppliers' lead times have declined significantly, there still remains a considerable backlog of orders for non-automotive bearings. Furthermore, with the knowledge that both the domestic and Japanese bearing industries are continuing to operate at nearly full capacity, it seems logical that the affected domestic industry is not likely to be injured in the foreseeable future. Thus, most of the signposts usually available to indicate injury or likelihood of injury in an antidumping investigation are not present here. Rather the indicators generally point to a healthy industry.

The missing causation. There are, however, some indicators of injury the Commission often examines which cannot be dismissed quickly here. Specifically, such indicators are suppression of prices, import penetration, reduced profits and failure to add new production facilities to meet a growing demand. While a case may be made, albeit a weak one, that the injury criterion has been satisfied because of the presence of one or more of those indicators, the second statutory criterion is clearly not met for any of those indicators. In other words, any injury to the domes tapered roller bearing industry measured by suppressed prices, import penetration, reduced profits or inability to augment capacity is not by reason of the LTFV imports from Japan. To find the requisite causation, the LTFV imports must be an identifiable cause of the injury.[3] The evidence here does not permit such an identification.

Suppression of prices. It can be asserted that the domestic industry has not been able to increase its prices as much as they should have been increased to cover adequately increased costs. That is the essence of the argument that price suppression is an indicator of injury. But if that indicator is present here, it cannot be said to be by reason of the LTFV imports from Japan. The LTFV imports could be termed a cause of price suppression if it were clear that there were smaller price increases on those articles directly competitive with LTFV imports than the price increases on articles that directly competed with non-LTFV imports. There is no such evidence. The price increases on all of the high volume under 4-inch U.S. tapered roller bearings were approximately the same regardless of whether the bearings competed directly with the LTFV Japanese imports or not and so the LTFV imports cannot be identified as a cause of any suppression of U.S. prices.

Import penetration. The Commission almost without exception looks at the penetration of the U.S. market by the LTFV imports in attempting to assess injury. A significant share of consumption taken by LTFV imports is not sufficient for me, however. It must be shown that the penetration by the LTFV imports was at the expense of the domestic industry. Here, that is not the situation. The domestic industry at the time of the LTFV imports was selling everything it could produce. The increased share of the market taken by LTFV imports was due to increased consumption. The domestic industry could not satisfy the demand and the Japanese importers captured the excess demand. They did not cause any reduction in sales by the domestic industry. Thus, the import penetration in the instant case is not one signifying injury to the domestic industry and whatever penetration exists is certainly not by reason of LTFV imports.

Reduced profits. The declining profit posture of two of the producers cannot be related to sales at LTFV. Those producers' inability to realize a normal return on their sales of tapered roller bearings has been more the result of their competitive disadvantage against Timken, the dominant domestic supplier, than a result of imports of tapered roller bearings. Moreover, the absence of any distinguishable difference in the pricing behavior between sales of Japanese bearings at fair value and those at LTFV leads to the conclusion that the financial difficulties faced by those domestic producers cannot be tied to LTFV sales. That is, because there is no distinguishable difference between the price effects of LTFV bearings and of those not sold at LTFV, it cannot be concluded that the adverse financial condition experienced by those two producers was by reason of sales at LTFV.

Failure to expand productive capacity. It can always be argued that an industry intends to expand its capacity, but to sustain such an argument, there must be hard evidence of an imminent intention to expand capacity, not just a gleam in the eye of an optimistic corporate executive. If there were specific plans, concrete proposals, recorded decisions of constituent parts of an industry to expand facilities, to increase capacity, which then had to be postponed or cancelled because of Japanese less than fair value imports, that would be one thing. Hard evidence is not a pious platitude on the desire to expand. What is revealed as a result of the investigation is that the Japanese have played an important role in supplying this market during a period of shortages of bearings. Despite the growth in demand for bearings the domestic industry has not expanded its production capacity to meet that demand.

The missing likelihood link. Just as the concept of "present injury" must in some way be connected to LTFV sales, so too must the concept of "likelihood of injury" be tied to the LTFV sales. Just as the evidence fails to provide the casual

[2] Prevention of establishment of an industry is not an issue in this investigation and will not be treated further in this statement.

[3] Elemental Sulphur from Mexico, U.S. Tariff Commission Inv. No. AA1921-92 (1972).

connection for present injury, so too is there no evidence to link likelihood of injury to LTFV sales.

The past history of pricing by the Japanese in this market suggests that any future LTFV sales from Japan will be purely an attempt to meet the level of prices in the U.S. market and therefore not injurious. The fact that the Japanese have been long-term suppliers to many United States purchasers is an indication of their stake in this market and concomitant unwillingness to sell at LTFV in the future. The Japanese interest in maintaining stability in this market is evidenced by the investment of at least one Japanese supplier in United States facilities for the production of tapered roller bearings and the investment of several Japanese suppliers in domestic facilities for the production of ball bearings. Under such circumstances it is not realistic to predicate any likelihood of injury upon future LTFV sales by the Japanese.

Conclusion. Based upon the considerations discussed in the foregoing it must be concluded that a domestic industry is not being or is not likely to be injured by reason of imports of Japanese tapered roller bearings, including inner race or cone assemblies and outer races or cups, sold or likely to be sold at LTFV.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

CONSUMERS POWER CO.

Issuance of Amendment to Provisional Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Provisional Operating License No. DPR-20 issued to Consumers Power Company which revised Technical Specifications for operation of the Palisades Plant located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

This amendment makes changes in the surveillance program for the tendons in the containment building post-tensioning system consistent with Regulatory Guide 1.35, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures". The effect of this change is to increase the number of tendons to be examined at the third inspection from nine to twenty-one; cause the third inspection to be conducted five years rather than eight years after the initial structural test; and eliminate the requirement to extrapolate measured tendon tension to forty years, since this procedure has not been found to be of practical value. The revised procedure requires that measured tendon tension fall between established upper and lower acceptance limits, which is consistent with Regulatory Guide 1.35.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated January 14, 1975, as corrected January 21, 1975, (2) Amendment No. 14 to License No. DPR-20, with Change No. 18, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 24th day of April 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch No. 1, Division of Reactor Licensing.

[FR Doc.75-11247 Filed 4-29-75;8:45 am]

[Docket No. 50-244]

ROCHESTER GAS AND ELECTRIC CORP.

Issuance of Amendment to Provisional Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Provisional Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation which revised Technical Specifications for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York. The amendment is effective as of its date of issuance.

This amendment clarifies the surveillance requirements during cold and refueling shutdown operating modes, removes some statements from the Technical Specifications that are no longer applicable, and corrects some references in the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated September 24, 1974, (2) Amendment No. 6 to License No. DPR-18, with Change No. 15, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Lyons Public Library, 67 Canal Street, Lyons, New York 14489, and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 23rd day of April 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch #1 Division of Reactor Licensing.

[FR Doc.75-11248 Filed 4-29-75;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 April 25, 1975 (44 USC 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 thru 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

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Survey of Environmentally-related Energy Data Bases and Calculational Models, single-time, energy research laboratories, Weiner, N., 395-4890.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration: Medical Economic Survey, NCHS 0414, single-time, national panel of 10,000 households, Dick Eisinger, 395-4716.

Health Resources Administration: Preliminary Plans for the Second Health and Nutrition Examination Survey, NCHS 0416, single-time, persons in U.S., Reese, B.F. 395-5630.

Health Resources Administration: Professional Nurse Traineeship Program, BHRD 0212, on occasion, schools of nursing, Dick Eisinger, 395-4716.

REVISIONS

VETERANS ADMINISTRATION

Application for Dependency or Indemnity Compensation by Parents, 21-535, on occasion, parents, Caywood, D.P., 395-3443.

Veterans Application for Compensation or Pension, 21-526, on occasion, veterans, Caywood, D.P., 395-3443.

Income—Net Worth and Employment Statement, VAF21-527, on occasion, veterans, Caywood, D.P., 395-3443.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service: Certification of Flue-cured Tobacco Varieties Planted (in order to receive limited price support payments), MQ-32, annually, operators of flue-cured tobacco farms, Caywood, D.P., 395-3443.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration: FAA Airport Master Record, FAA 5010-1, on occasion, owners of public use airports, Caywood, D.P., 395-3443.

Health Resources Administration: Utilization of Physician's Assistants in Primary Care, Mental Health, 0610, other (see SF-83), Staff members of mental health institues, etc., Dick Eisinger, 395-4716.

EXTENSIONS

SMALL BUSINESS ADMINISTRATION

Minority Vendor Profile, SBA 1023, semi-annually, minority owned business, Marsha Traynham, 395-4529.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration: Application for Electric Loan REA Borrowers, REA 740G, on occasion, REA electric borrowers, Marsha Traynham, 395-4529.

Farmers Home Administration: Business and Family Record Book (FHA borrowers), FHA-432-10, on occasion, individuals, Marsha Traynham, 395-4529.

Agricultural Stabilization and Conservation Service: Application for Payments of Amounts Due Persons Who Have Died, Disappeared, or Been Declared Incompetent, ASCS-325, on occasion, farmers and ranchers, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75-11400 Filed 4-29-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-5671]

THE CONNECTICUT LIGHT AND POWER CO., ET AL.

Proposed Modification of Earnings-Coverage Test Relating To Issuance of Additional Bonds

Notice is hereby given that The Connecticut Light and Power Company ("CL&P") P.O. Box 2010, Hartford, Connecticut 06101, The Hartford Electric Light Company ("HELCO") P.O. Box 2370, Hartford, Connecticut 06101, and Western Massachusetts Electric Company ("WMECO") 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, public-utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 1, 6, 7, 12, 15, and 20 of the Act as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

CL&P, HELCO, and WMECO have first mortgage bonds outstanding under their respective mortgage indentures. All three companies became subject to the Act in 1966, upon registration of their parent, Northeast (HCAR No. 15448); and their respective indentures were subsequently amended to conform with the Commission's Statement of Policy Regarding First Mortgage Bonds ("Policy Statement") adopted in 1956 (HCAR No. 13105). The Policy Statement provides, among other things, that indentures subject thereto shall require, as a prerequisite for the issuance of additional bonds, that earnings be at least two times the proforma total annual bond interest requirements; and that the amount of non-operating income to be taken into account for purposes of such interest-coverage test shall not exceed 10 percent of net operating income.

In 1967, incidental to amendment of their indentures to conform with the Policy Statement, CL&P and HELCO were authorized to modify the general 10 percent limitation on the inclusion of non-operating income by adding the proviso—"or such higher percent not to exceed 20 percent as shall be authorized by the Commission under the Act" (HCAR Nos. 15727 and 15672, respectively). The same proviso in the same context was authorized as to WMECO's indenture in 1973 (HCAR No. 18022). In CL&P's case, bondholder consent was not required; in the other two cases, the required bondholder consent was obtained.

In each case, the proviso was authorized in recognition of the potential future significance of income to each of the three companies arising from their part ownership with other New England utilities of the equity in four regional nuclear generating companies, each of which owns and operates a single-unit nuclear generating plant. The nuclear generating companies, and the aggregate stock interest owned in each of them by the three Northeast subsidiaries, are: Connecticut Yankee Atomic Power Company (44 percent), Yankee Atomic Electric Company (31.5 percent), Maine Yankee Atomic Power Company (15 percent), and Vermont Yankee Nuclear Power Corporation (12 percent). They are collectively referred to as the "Yankee Companies."

CL&P, HELCO, and WMECO are obligated to provide capital required by the Yankee Companies (to the extent such capital is not provided by the public sale of senior securities from other outside sources) and to pay a share of the Yankee Companies' operating expenses

(including depreciation and return on invested capital) based upon their respective percentage ownership of those Companies' stock. In return, CL&P, HELCO, and WMECO are entitled to purchase at cost, as defined, a percentage of the power produced by each of the Yankee Companies equal to their respective stock ownership percentages. Such cost, which includes the above-mentioned return on invested capital, is treated as an operating expense by the companies receiving the power. The net income of the Yankee Companies resulting from sales of power is allocated to the shareholders, including CL&P, HELCO, and WMECO, in accordance with their respective percentages of stock ownership. It is stated that their interest in the earnings of the Yankee Companies is virtually all realized in cash, since those Companies tend to pay out on a current basis all of their net earnings as dividends; that such "non-operating income" produces funds for the payment of interest; and that, unlike other non-operating income, this income is directly related to the shareholder companies' current utility operations.

It is proposed, and Commission authorization is sought in accordance with the above proviso contained in indentures of CL&P, HELCO, and WMECO, that the amount of non-operating income which the companies may utilize in the computation of interest coverage for the future issuance of additional bonds, shall be the sum of (i) all net non-operating income from sources other than the Yankee Companies up to the present 10 percent limitation, plus (ii) all earnings recorded on an accrual basis by CL&P, HELCO, and WMECO from their equity investments in the Yankee Companies. If authorized by the Commission, such modified method of computing interest coverage would not require the consent of the bondholders.

It is further stated that in the year 1974, CL&P, HELCO, and WMECO recorded earnings on their investments in the Yankee Companies of $1,755,000, $825,000, and $685,000, respectively; that treatment of those earnings in accordance with the method proposed would have resulted in the utilization by the three companies, for indenture earnings-coverage purposes, of non-operating income from all sources equal, respectively, to 11.95 percent, 11.84 percent, and 12.93 percent of net operating income; and that this, in turn, would have increased the amount of bonds issuable under their indentures by approximately $9,800,000, $4,400,000, and $3,800,000, respectively, assuming a 9 percent interest rate. Such additional bonds would represent 1.7 percent, 1.4 percent and 2.5 percent of each company's respective amount of first mortgage bonds outstanding at December 31, 1974.

Fees and expenses to be incurred in connection with the proposed transactions are estimated at $4,500, including legal fees of $2,500. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than May 21, 1975, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.75-11312 Filed 4-29-75;8:45 am]

SMALL BUSINESS ADMINISTRATION

AUGUSTA DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Augusta District Advisory Council will meet at 10:30 a.m., (e.d.t.), Monday, May 20, 1975, at the Holiday Inn, Augusta, Maine, to discuss such business as may be presented by members, the staff of the Small Business Administration, and others attending. For further information, call or write Thomas A. McGillicuddy, Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622-6225.

Dated: April 18, 1975.

ANTHONY S. STASIO,
Chief Counsel for Advocacy,
Small Business Administration.

[FR Doc.75-11214 Filed 4-29-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 753]

ASSIGNMENT OF HEARINGS

APRIL 25, 1975.

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 125777 Sub-147, Jack Gray Transport, Inc., and MC 125777 Sub-149, Jack Gray Transport, Inc., now being assigned July 8, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134783 Sub-27, Direct Service, Inc., now being assigned July 1, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 105813 Sub-199, Belford Trucking Co., Inc., now being assigned September 11, 1975, at Washington, D.C., Interstate Commerce Commission.

MC 113495 Sub-67, Gregory Heavy Haulers, Inc., now being assigned September 8, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 133878 Sub-2, A. E. Trucks, Inc., now being assigned, July 8, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-12250, Lovelace Truck Service, Inc.—Purchase (Portion)—Atkinson Lines, Inc. and MC 151 Sub-53, Lovelace Truck Service, Inc., now being assigned July 21, 1975 (2 weeks) at Columbus, Ohio; in a hearing room to be designated later.

MC 107295 Sub-729, Pre-Fab Transit Co., now assigned May 5, 1975 at Washington, D.C. is canceled and application dismissed.

MC 140030 Sub-1, Ray Kurtz and Linda Farley, a partnership, d.b.a. Plastic Express, now assigned June 13, 1975 at San Francisco, California, is postponed to July 14, 1975, at Los Angeles, Calif.; in a hearing room to be designated later.

MC 113855 Sub-292, International Transport, Inc., now assigned June 23, 1975, at San Francisco, Ca., is canceled and application dismissed.

MC 13900 (Sub-No. 18), Midwest Haulers, Inc., has been continued to May 5, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119777 Sub-311, Ligon Specialized Haulers, Inc., now being assigned June 13, 1975 (1 day), at San Francisco, California; in a hearing room to be designated later.

MC-F-12313, Wells Cargo, Inc.—Purchase—Western Truck Lines, and MC 43269 Sub-60 Wells Cargo, Inc., now being assigned June 23, 1975 (1 week), at Los Angeles, California; in a hearing room to be designated later.

MC 139986, Frank C. Scheer, d.b.a. Allstates Coach Service, now being assigned June 16, 1975 (1 day), at Miami, Florida; in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11350 Filed 4-29-75;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY ELIMINATION OF GATEWAY APPLICATIONS

APRIL 24, 1975.

The following applications to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065(d)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of verified statements in opposition with the Interstate Commerce Commission on or before May 30, 1975. (This procedure is outlined in the Commission's report and order in Gateway Elimination, 119 M.C.C. 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

No. MC 7640 (Sub-No. 46G) (Correction), filed June 4, 1974, and published in the FEDERAL REGISTER issue of March 18, 1975, and partially republished as corrected this issue. Applicant: BARNES TRUCK LINE, INC., P.O. Box 999, Wilson, N.C. 27893. Applicant's representative: John T. Coon, P.O. Box 2006, High Point, N.C. 27261.

NOTE.—The purpose of this corrected republication is to make the following corrections: (1) In part (1) of the instant application, South Carolina 145 should be changed to read, South Carolina Highway 146; (2) In parts (2) and (3), the phrase, from points in North Carolina on and east of U.S. Highway 29, should be changed to read, from points in North Carolina on and west of U.S. Highway 29; and (3) In part (4), the phrase, Virginia-South Carolina State line, should be changed to read, Virginia-North Carolina State Boundary line. The rest of the application remains as originally published.

No. MC 113388 (Sub-No. 105G) (Correction), filed June 4, 1974, and published in the FEDERAL REGISTER issue of March 19, 1975, and partially republished as corrected this issue. Applicant: LESTER C. NEWTON TRUCKING CO., P.O. Box 618, Seaford, Del. 19973. Applicant's representative: Charles Ephraim, 1250 Connecticut Ave. NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Frozen foods*, (A)(1) from Dover, Del., to points in Florida, Georgia and South Carolina. The purpose of this filing is to eliminate the gateway at Robbinsville, N.J. (E) *Canned foods*, (E)(1) from points in Cecil and Kent Counties, Md. and those in Accomack and Northampton Counties, Va., to points in New York, Pennsylvania, and Lynchburg, Va., and points in Virginia on and east of U.S. Highway 1. The purpose of this filing is to eliminate the gateways at points in Kent and Sussex Counties, Del., and points in the seven counties on the Eastern Shore of Maryland, and points in New Jersey. (H) *Such commodities* as are used in or incidental to the preparation, packing, and shipment of canned, frozen, and processed foods (except in bulk), from points in Connecticut, Delaware, Massachusetts, New York, Pennsylvania, Rhode Island, Virginia and the District of Columbia, to points in Sussex and Kent Counties, Del. and those in Caroline, Dorchester, Queen Annes, Somerset, Talbot, Wicomico, and Worcester Counties, Md. The purpose of this filing is to eliminate the gateways at points in Atlantic and Cumberland Counties, N.J.

NOTE.—The purpose of this partial republication is to correct the spelling of Dover, Del. in (A)(1) above; to add points in Virginia on and east of U.S. Highway 1 to the destination territory in (E)(1) above; and to add the word "in" to the commodity description in (H) above. The rest of the publication remains as originally published.

No. MC 134838 (Sub-No. 10G) (Correction), filed June 4, 1974, and published in the FEDERAL REGISTER of March 19, 1975, and partially republished as corrected this issue. Applicant: SOUTHEASTERN TRANFER AND STORAGE CO., INC., 2561 Plant Atkinson Rd., NW., P.O. Box 2 (Balton Station), Atlanta, Ga. 30318. Applicant's representative Charles Ephraim, Suite 600, 1250 Connecticut Ave. NW., Washington, D.C. 20036.

NOTE.—The purpose of this correction is to indicate that U.S. Highway 2 in Part (4) of the instant application should read, U.S. Highway 29. The rest of the application remains as originally published.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 12, 1975. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 113495 (Sub-No. E23), filed June 3, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over

irregular routes, transporting: (1) *Road construction machinery and equipment,* the transportation of which, because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment); and (2) *Such self-propelled articles,* each weighing 15,000 pounds or more, which may be included in road construction machinery and equipment, and *supplies* moving in connection therewith (except petroleum products and coal tar products, in bulk, in tank vehicles, and except coal), restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, restricted to commodities which are transported on trailers, between points in Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Mineral, Monroe, Morgan, Pendleton, Pocahontas, Randolph, Summers, and Tucker Counties, W. Va., on the one hand, and, on the other, points in Allen, Ballard, Barren, Bell, Calloway, Carlisle, Christian, Clay, Clinton, Cumberland, Fulton, Graves, Harlan, Hickman, Knott, Knox, Laurel, Leslie, Letcher, Logan, Marshall, McCracken, McCreary, Metcalfe, Monroe, Perry, Pulaski, Russell, Simpson, Todd, Trigg, Warren, Wayne, and Whitley Counties, Ky. The purpose of this filing is to eliminate the gateway of points in Virginia on and west of U.S. Highway 220.

No. MC 113495 (Sub-No. E24), filed June 3, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Road construction machinery and equipment,* the transportation of which, because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment); and (2) *Such self-propelled articles,* each weighing 15,000 pounds or more, which may be included in road construction machinery and equipment, and *supplies* moving in connection therewith (except petroleum products and coal tar products, in bulk, in tank vehicles, and except coal), restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, and restricted to commodities which are transported on trailers, between points in Tennessee, on the one hand, and, on the other, points in Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Mineral, Monroe, Morgan, Pendleton, Pocahontas, Raleigh, Randolph, Summers, and Tucker Counties, W. Va. The purpose of this filing is to eliminate the gateway of points in Virginia west of U.S. Highway 220.

No. MC 113495 (Sub-No. E25), filed June 3, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Road construction machinery and equipment,* the transportation of which, because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment); and (2) *Such self-propelled articles,* each weighing 15,000 pounds or more, which may be included in road construction machinery and equipment and *supplies* moving in connection therewith (except petroleum products and coal tar products, in bulk, in tank vehicles, and except coal), restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or supplies, restricted to commodities which are transported on trailers, between points in Anderson, Bledsoe, Blount, Bradley, Carter, Claiborne, Cocke, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Polk, Rhea, Roane, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington Counties, Tenn., on the one hand, and, on the other, points in Kanawha County, W. Va. The purpose of this filing is to eliminate the gateway of points in Virginia on and west of U.S. Highway 220.

No. MC 113495 (Sub-No. E26), filed June 3, 1974. Applicant: GREGORY HEAVY HAULERS, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Road construction machinery and equipment,* the transportation of which, because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment); and (2) *Such self-propelled articles,* each weighing 15,000 pounds or more, which may be included in road construction machinery and equipment, and *supplies* moving in connection therewith (except petroleum products and coal tar products, in bulk, in tank vehicles, and except coal), restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, restricted to commodities which are transported on trailers, between points in that portion of North Carolina on and west of a line beginning at the North Carolina-Virginia State line and extending along U.S. Highway 220 to Rockingham, N.C., and thence along U.S. Highway 1 to the North Carolina-South Carolina State line, on the one hand, and, on the other, points in West Virginia (except points in Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Lincoln, Mercer, Mineral, Mingo, Monroe, Morgan, Nicholas, Pendleton, Pocahontas, Randolph, Summers, Tucker, Wayne, and Webster Counties). The purpose of this filing is to eliminate the gateway of points in Virginia west of U.S. Highway 220.

No. MC 113495 (Sub-No. E27), filed June 3, 1974. Applicant: GREGORY HEAVY HAULERS, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such earthmoving, construction, mining, and maintenance machinery and equipment, and parts* which may be included in heavy machinery and contractors' equipment and parts, all of which because of size or weight require special equipment or special handling; (2) *Such self-propelled earthmoving, construction mining, and maintenance machinery and equipment,* each weighing 15,000 pounds or more which may be included in heavy machinery and contractors' equipment and *related parts* moving in connection therewith, restricted to commodities which are transported on trailers, from the plant site of Athey Products Corporation at or near Wake Forest, N.C., to points in Arkansas and points in Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clinton, Fayette, Franklin, Fulton, Greene, Hancock, Henderson, Henry, Jackson, Jefferson, Jersey, Johnson, Knox, Logan, Macon, Madison, Marion, Massac, Mason, Macoupin, McDonough, Menard, Mercer, Monroe, Montgomery, Morgan, Peoria, Pike, Perry Pulaski, Randolph, Rock Island, Sangamon, St. Clair, Schuyler, Scott, Stark, Tazewell, Union, Warren, Washington, and Williamson Counties, Ill. The purpose of this filing is to eliminate the gateway of points in Kentucky west of the Tennessee River.

No. MC 113495 (Sub-No. E28), filed June 3, 1974. Applicant: GREGORY HEAVY HAULERS, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Heavy earth moving, construction, mining, and maintenance machinery and construction equipment,* the transportation of which, because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipelines materials or equipment); (2) *Such self-propelled* earth-moving, construction, mining, and maintenance machinery and equipment, each weighing 15,000 pounds or more which may be included in heavy machinery and construction equipment and related parts moving in connection therewith, restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, restricted to commodities which are transported on trailers, from the plant site of Athey Products Corporation at or near Wake Forest, N.C., to points in Tennessee (except points in Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jef-

ferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington Counties). The purpose of this filing is to eliminate the gateway of Kentucky.

No. MC 113495 (Sub-No. E29), filed June 3, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Trucks*, designed for off-highway use, each weighing 15,000 pounds or more, which may be included in heavy machinery and construction equipment, in initial movements, in truckaway service, restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, and restricted to commodities which are transported on trailers, from Decatur, Ill., to points in Arkansas, Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Crittenden, Dallas, Desha, Drew, Garland, Grant, Hempstead, Hot Spring, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Lonoke, Miller, Monroe, Nevada, Ouachita, Phillips, Pike, Prairie, Pulaski, Saline, St. Francis, Sevier, and Union Counties, Ark., and (b) *Related parts* for the above-specified commodities in (1) (a) when moving in connection therewith, restricted against the transportation of commodities in connection with the stringing or picking up of pipeline materials or equipment, restricted to commodities which are transported on trailers, restricted against the transportation of parts from Decatur, Morton, and Joliet, Ill., to points in the Memphis, Tenn., commercial zone, as defined by the Commission, from Decatur, Morton, and Joliet, Ill., to points in Arkansas, Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Crittenden, Dallas, Desha, Drew, Garland, Grant, Hempstead, Hot Spring, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Lonoke, Miller, Monroe, Nevada, Ouachita, Phillips, Pike, Prairie, Pulaski, Saline, St. Francis, Sevier, and Union Counties, Ark.; (2) *Trucks*, designed for off-highway use, which may be included in heavy machinery and construction equipment, the transportation of which, because of size or weight, requires the use of special equipment, in initial movements, in truckaway service (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment), from Decatur, Ill., to points in Arkansas, Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Crittenden, Dallas, Desha, Drew, Garland, Grant, Hempstead, Hot Spring, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Lonoke, Miller, Monroe, Nevada, Ouachita, Phillips, Pike, Prairie, Pulaski, Saline, St. Francis, Sevier, and Union Counties, Ark. The purpose of this filing is to eliminate the gateway of Tennessee and points in Kentucky west of the Tennessee River.

No. MC 113495 (Sub-No. E52), filed June 3, 1974. Applicant: GREGORY HEAVY HAULER, INC., P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: E. T. Gregory (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural steel*, the transportation of which because of size or weight, requires the use of special equipment (excluding any transportation in connection with the stringing or picking up of pipeline materials or equipment), from points in Arkansas, to points in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, and Washington, D.C. The purpose of this filing is to eliminate the gateway of points in Kentucky west of the Tennessee River and Nashville, Tenn.

No. MC 114457 (Sub-No. E132), filed May 25, 1974. Applicant: DART TRANSIT COMPANY, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned preserved foodstuff*, from points in Montana, to points in that part of Iowa, Winnebago, Hancock, Wright, Hamilton, Boone, Polk, Warren, Clarke, and Decatur Counties. The purpose of this filing is to eliminate the gateway of Chanhassen, Minn.

No. MC 114457 (Sub-No. E133), filed May 25, 1974. Applicant: DART TRANSIT COMPANY, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned preserved foodstuffs*, from points in that part of Wisconsin in and north of Buffalo, Eau Claire, Clark, Marathon, Langlade, Forest and Florence Counties, to points in that part of Missouri in and west of Schuyler, Adair, Macon, Randolph, Howard, Cooper, Morgan, Camden, Laclede, Webster, Christian, and Taney Counties. The purpose of this filing is to eliminate the gateway of Chanhassen, Minn.

No. MC 114457 (Sub-No. E153), filed May 24, 1974. Applicant: DART TRANSIT COMPANY, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned preserved foodstuffs*, from points in that part of Iowa in and east of Winnebago, Hancock, Wright, Hamilton, Boone, Polk, Warren, Clarke, and Decatur Counties, to points in Montana. The purpose of this filing is to eliminate the gateway of Chanhassen, Minn.

No. MC 115322 (Sub-No. E92), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Winchester, Va., to points in Florida. The purpose of this filing is to eliminate the gateways of points in Berkeley Counties, W. Va.

No. MC 115322 (Sub-No. E93), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E94), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va., to Annapolis, Md. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E95), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Apples*, from Winchester, Va., to Baltimore, Md. The purpose of the filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E96), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Winchester, Va., to points in Florida. The purpose of this filing is to eliminate the gateways of points in Loudoun, Rockingham, Shenandoah, and Frederick Counties, Va., and Berkeley County, W. Va., which are within 10 miles of Winchester, Va.

No. MC 115322 (Sub-No. E97), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va., to points in New Jersey. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E98), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsyl-

vania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va., to points in South Carolina. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E99), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E100), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* from Winchester, Va. to points in Alabama. The purpose of this filing is to eliminate the gateway of Timberville, Va.

No. MC 115322 (Sub-No. E101), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products* from Winchester, Va., to points on Long Island, N.Y. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E102), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from Winchester, Va. to points in South Carolina. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E103), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from Winchester, Va. to points in Mississippi. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E104), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor, vehicle, over irregular routes, transporting: *Canned food products* from Winchester, Va. to points in Alabama. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E105), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor, vehicle, over irregular routes, transporting: *Canned food products*, from Winchester, Va. to points in Georgia. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E106), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor, vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from Winchester, Va. to points in Georgia. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E107), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from Winchester, Va. to points in Alabama. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E108), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned food products* from Winchester, Va. to points in Kentucky. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E109), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* from Winchester, Va. to points in Georgia. The purpose of this filing is to eliminate the gateway of Timberville, Va.

No. MC 115322 (Sub-No. E110), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* from Winchester, Va. to points in Mississippi. The purpose of this filing is to eliminate the gateway of Timberville, Va.

No. MC 115322 (Sub-No. E111), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative; James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Winchester, Va. to points in Tennessee. The purpose of this filing is to eliminate the gateway of Timberville, Va.

No. MC 115322 (Sub-No. E112), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Winchester, Va. to points in Missouri. The purpose of this filing is to eliminate the gateway of Timberville, Va.

No. MC 115322 (Sub-No. E113), filed January 13, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned good products* from Winchester, Va. to New York, N.Y. The purpose of this filing is to eliminate the gateway of Front Royal, Va.

No. MC 115322 (Sub-No. E123), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned citrus products* from points in Florida to points in Virginia within 70 miles of Winchester, Va. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E124), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Erie County, Pa. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E125), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa.

Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles* from points in Erie County, Pa. to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E126), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Preserved, drained, and glazed fruit and fruit peel* not canned and not frozen, from Plant City, Fla. to points in Virginia within 70 miles of Winchester, Va. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E128), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, from points in Erie County, Pa. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E129), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products* from points in Chautauqua County, N.Y. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E130), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Preserved, drained, and glazed fruit and fruit peel* not canned and not frozen, from Plant City, Fla. to Cumberland, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E131), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit juice*, in containers from Dundee and Penn Yan, N.Y. to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E132) filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles*, from points in Chautauqua County, N.Y., to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E133), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 308, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products*, from points in Orleans County, N.Y., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E134), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape juice concentrate* from Brocton and Westfield, N.Y., and North East, Pa., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E135), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, except grape juice in bulk, from North East, Pa. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E136), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles*, from points in Erie County, N.Y. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E137), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products*, from Fulton, N.Y. to the District of Columbia and Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E138), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape juice* from Westfield, N.Y. to Augusta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E139), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape juice* from Westfield, N.Y. to Macon, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E140), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* (except grape juice in bulk), when moving in mixed shipments with frozen foods, from North East, Pa., and Westfield, N.Y., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E141), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit crystals*, from Lake Wales, Fla., to the District of Columbia. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E142), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, except grape juice, in bulk, in tank vehicles, from North East, Pa., and Westfield, N. Y., to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E143), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* (except grape juice in bulk), from Westfield, N.Y., to points in Florida. The purpose of this filing is to eliminate the gateway of points in Frederick County, Va.

No. MC 115322 (Sub-No. E145), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Frozen grape concentrate*, from Westfield, N.Y., to Elberton, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E146), filed January 13, 1974. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Winchester, Va., to points in Tennessee. The purpose of this filing is to eliminate the gateway of Inwood, W. Va.

No. MC 115322 (Sub-No. E147), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, from points in Chautauqua County, N.Y., to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E148), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen baked apples*, from Belfast, Maine, to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E149), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen baked apples*, from Belfast, Maine, to Pikeville, Ky. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E150), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned sauerkraut* and *pickles*, when moving in mixed shipments with frozen foods, from points in Erie County, Pa., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E151), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Erie County, Pa., to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E152), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th & Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit* berries, from Hendersonville, N.C., to points in Virginia and West Virginia within 70 miles of Winchester, Va. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E169), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products*, from Wayland, N.Y. to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E170), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products*, from Buffalo, N.Y. to the District of Columbia and Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E171), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products*, from Brockport, N.Y. to the District of Columbia and Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E172), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit products* from Oswego, N.Y. to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E176), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, from points in Erie County, Pa. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elbertson, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E177), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles*, from North East, Pa. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E178), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Florida 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles*, from points in Chautauqua County, N.Y. to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E182), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*,

except grape juice in bulk, from Westfield, N.Y. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E183) filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pennsylvania Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meats*, from Charleston, S.C., to points in Virginia and West Virginia within 10 miles of Winchester, Va. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E184), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Chautauqua County, N.Y. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E185), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit concentrates*, from Brocton and Westfield, N.Y. to Savannah, Brunswick, Cornelia, Gainesville, Athens, Macon, Elberton, Augusta, and Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E186), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from Westfield, N.Y. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E187), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, from points in Erie County, Pa. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E188), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from Westfield, N.Y. to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E198), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in Erie County, Pa. to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E190), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from Westfield, N.Y. to Athens, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E191), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from Westfield, N.Y. to Gainesville, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No MC 115322 (Sub-No. E129), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from eWstfield, N.Y. to Brunswick, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E193), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, from Westerfield, N.Y., to Cornelia, Ga. tansporting: *Frozen grape concentrate*, The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E195), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen baked apples*, from Belfast, aMine, to Cumberland, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E196), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut* and *pickles*, from points in Chautauqua County, N.Y., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E197), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Sauerkraut* and *pickles*, from points in Erie County, Pa., to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E198), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Chautauqua County, N.Y., to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E199), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Chautauqua County, N.Y., to Baltimore, Md. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E200), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit products*, from points in Erie County, Pa., to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E201), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit concentrate*, from Brocton and Westfield, N.Y., to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E202), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut and pickles*, from points in Chautauqua County, N.Y., to the District of Columbia. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E203), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, when moving in mixed shipments with frozen foods, from points in Chautauqua County, N.Y., to points in South Carolina. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 115322 (Sub-No. E204), filed January 27, 1975. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: James Wilson, 13th and Pa. Ave. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen grape concentrate*, from Westfield, N.Y., to Atlanta, Ga. The purpose of this filing is to eliminate the gateway of Winchester, Va.

No. MC 117344 (Sub-No. E95), filed May 19, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid glue, paints*, varnishes, and surface coatings, in bulk, in tank vehicles, from the facilities of the Polymers and Chemicals Division of W. R. Grace & Co., at Owensboro, Ky., to points in Virginia on and east of a line beginning at the Virginia-Kentucky State line and extending along U.S. Highway 460 to Christiansburg, thence along Virginia Highway 8 to the Virginia-North Carolina State line. The purpose of this filing is to eliminate the gateway of Addyston (Cincinnati, Ohio), Ohio.

No. MC 117344 (Sub-No. E96), filed May 19, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals* (except road building and construction materials and spent silica gel catalyst), in bulk, in tank vehicles, from Cincinnati, Ohio, to points in Tennessee on and west of a line beginning at the Tennessee-Kentucky State line and extending along Tennessee Highway 53 to junction Tennessee Highway 52, thence along Tennessee Highway 52 to junction Tennessee Highway 42, thence along Tennessee Highway 42 to Sparta, Tenn., thence along Tennessee Highway 111 to junction Tennessee Highway 8, thence along Tennessee Highway 8 to junction U.S. Highway 127, thence along U.S. Highway 127 to Chattanooga, Tenn. The purpose of this filing is to eliminate the gateway of Jackson County, Ind.

No. MC 117344 (Sub-No. E97), filed May 19, 1974. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils*, in bulk, in tank vehicles, from points in Kentucky on and west of a line beginning at Maysville, Ky., and extending along Kentucky Highway 11 to junction Kentucky Highway 30, thence along Kentucky Highway 30 to junction U.S. Highway 25, thence along U.S. Highway 25 and U.S. Highway 25W to the Kentucky-Tennessee State line (except Louisville) to points in Delaware, Maryland, and New Jersey. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 117344 (Sub-No. E98), filed May 19, 1974. Applicant: THE MAXWELL COMPANY, 10380 Evendale Drive, Cincinnati, Ohio 45215. Applicant's representative: Thomas L. Maxwell, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils*, in bulk, in tank vehicles, from points in Illinois on and north of U.S. Highway 36 (except Chicago, Decatur, and Bloomington), and *soya bean oil*, from Chicago, Decatur, and Bloomington, Ill., to points in Kentucky on and east of a line beginning at the Kentucky-Indiana State line and extending along U.S. Highway 421 to Frankfort, thence along U.S. Highway 127 to Danville, thence along U.S. Highway 150 to Stanford and thence along U.S. Highway 27 to the Kentucky-Tennessee State line. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 117574 (Sub-No. E5) (Correction) filed May 31, 1974. Published in the FEDERAL REGISTER April 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (2) *Commodities*, which because of size or weight require the use of special equipment, and related machinery, tools, parts, and supplies moving in connection therewith, between points in Niagara, Orleans, Monroe, Genesee, Erie, and Chautauqua Counties, N.Y., on the one hand, and, on the other, points in Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Wood, Ritchie, Doddridge, Harrison, Jackson, Wirt, Roane, Calhoun, Gilmer, Lewis, Braxton, Upshur, Randolph, Webster, Pocahontas, Mason, Cabell, Putnam, Kanawha, Clay, Nicholas, Greenbrier, Summers, Monroe, Fayette, Raleigh, Mercer, Wayne, Lincoln, Boone, Mingo, Logan, Wyoming, and McDowell Counties, W. Va., restricted to commodities which are transported on trailers (points within 80 miles of Columbus, Ohio*); The purpose of this filing is to eliminate the gateways indicated by the asterisks above. The purpose of this filing is to partially correct the filing, the remainder of this filing is correct.

No. MC 117574 (Sub-No. E12) (Correction), filed May 31, 1974. Published in the FEDERAL REGISTER April 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (5) Self-propelled construction and material handling machines, construction and material handling machines without undercarriages, and attachments and parts for the machines described above, restricted to self-propelled articles each weighing 15,000 pounds or more transported on trailers and construction and material handling machines without undercarriages, which because of size or weight require the use of special equipment, and restricted against the transportation of machinery, equipment, materials, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, from Waukesha, Wis., to points in North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 501 to junction U.S. Highway 70, thence along U.S. Highway 70 to junction U.S. Highway 401, thence along U.S. Highway 401 to junction U.S. Highway 301, thence along U.S. Highway 301 to the North Carolina-South Carolina State line points in that part of Pennsylvania on and east of U.S. Highway 219 to junction U.S. Highway 322, thence on and north of a line beginning at Grampian, Pa., and extending along U.S. Highway 322 through Clearfield and State College, Pa., to Lewistown, Pa., thence along U.S. Highway 522 to Selinsgrove, Pa., and on and west of U.S. Highway 11 to the New York-Pennsylvania State line (except the site of the Curtiss Wright Corporation Plant located near Clearfield)*; The purpose of this filing is to eliminate the gateways indicated by asterisks above. The purpose of this filing is to partially correct the filing, the remainder of this filing is correct.

No. MC 117574 (Sub-No. E23) (Correction), filed May 31, 1974, published

in the FEDERAL REGISTER March 19, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (other than truck-tractors), *tractor attachments, incidental machinery* used with such tractors, and parts of the above-described commodities when moving therewith, between points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island, New Jersey, New York, and those points in Pennsylvania on and north of U.S. Highway 322, on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and those points in North Dakota on and east of a line beginning at the United States-Canadian Border along North Dakota Highway 69 to U.S. Highway 281, thence along U.S. Highway 281 to its junction with Interstate Highway 94, thence along Interstate Highway 94 to junction U.S. Highway 83, thence along U.S. Highway 83 to the North Dakota-South Dakota State line, points in South Dakota on and west of U.S. Highway 83, points in Nebraska on and west of U.S. Highway 83, points in Kansas on and west of a line from the Nebraska State line along U.S. Highway 83 to its junction with U.S. Highway 36, thence along U.S. Highway 36 to junction U.S. Highway 283, thence along U.S. Highway 283 to the Kansas-Oklahoma State line, points in Oklahoma on and west of a line beginning at the Kansas State line and extending along U.S. Highway 83 to its junction with U.S. Highway 64, thence along U.S. Highway 64 to its junction with U.S. Highway 270, thence along U.S. Highway 270 to its junction with U.S. Highway 281, thence along U.S. Highway 281 to Hinton, thence along U.S. Highway 281 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 81 at Chickasha, thence along U.S. Highway 81 to junction Oklahoma Highway 19, thence along Oklahoma Highway 19 to junction U.S. Highway 77, thence along U.S. Highway 77 to the Oklahoma-Texas State line, and points in Texas on and south of a line beginning at the Oklahoma State line in a southerly direction along U.S. Highway 77 to junction U.S. Highway 82, thence along U.S. Highway 82 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction Texas Highway 63, thence along Texas Highway 63 to the Texas-Louisiana State line. RESTRICTION: Restricted against such commodities which because of size or weight require the use of special equipment (Nunda, N.Y.*).

(2) *Tractors* (other than truck-tractors), *tractor attachments, incidental machinery* used with such tractors, and *parts* of the above-described commodities when moving therewith, between points in Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, and New York (except Cattaraugus and Chautauqua Counties), on the one hand, and, on the other, points in Arkansas, Illinois Iowa, Minnesota, Wisconsin, Upper Peninsula of Michigan, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Louisiana, and Mississippi, and those points in Texas east of a line beginning at the Oklahoma-Texas State line on U.S. Highway 77 to its junction with U.S. Highway, 82, thence along U.S. Highway 82 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction Texas Highway 63, thence along Texas Highway 63 to the Texas-Louisiana State line. Restriction: Restricted against such commodities which because of size or weight require the use of special equipment, and restricted against the transportation of shipments originating at points in Black Hawk, Dubuque, and Polk Counties, Iowa (Nunda N.Y.*); (3) *tractors* (other than truck-tractors) *tractor attachments incidental machinery* used with such tractors, and *parts* of the above-described commodities when moving therewith, between points in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island and those in New York in and east of the Counties of Erie, Wyoming, and Allegany, on the one hand, and, on the other, points in the Lower Peninsula of Michigan, and all points in Indiana. Restriction: Restricted against such commodities which because of size or weight require the use of special equipment, (Nunda, N.Y.*); and (4) *tractors* (other than truck-tractors), *tractor attachments, incidental machinery* used with such tractors, and *parts* of the above-described commodities when moving therewith, between points in New Jersey, on the one hand, and, on the other, points in North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Arkansas, Illinois, Wisconsin, Michigan, and those points in Texas east of a line beginning at the Oklahoma State line, thence along U.S. Highway 77 to its junction with U.S. Highway 82, thence along U.S. Highway 82 to junction U.S. Highway 69, thence along U.S. Highway 69 to junction Texas Highway 63, thence along Texas Highway 63 to the Louisiana State line, points in Indiana west of a line beginning at the Indiana-Ohio State line on U.S. Highway 24 to junction Interstate Highway 69, thence along Interstate Highway 69 to junction Indiana Highway 67, thence along Indiana Highway 67 to the Indiana-Illinois State line, and those in Louisiana in and west of the parishes of West Feliciana, Pointe Coupee, Iberville, Iberia, and St. Mary. Restriction: Restricted against such commodities which because of size or weight require the use of special equipment, and restricted against the transportation of shipments originating at points in Black Hawk, Dubuque, and Polk Counties, Iowa, (Nunda, N.Y.*). The purpose of this filing is to eliminate the gateways indicated by the asterisks above. The purpose of this correction is to clarify the commodity description in (1).

No. MC 117574 (Sub-No. E35), filed May 31, 1974. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles* which because of size or weight require the use of special equipment, and *related iron and steel and iron and steel products* when their transportation is incidental to the transportation of iron and steel articles, which because of size or weight, require the use of special equipment, from points in Ohio within 80 miles of Columbus, Ohio, points in the West Virginia Counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, and Wood, points in Pennsylvania on and north of a line beginning at the Pennsylvania-West Virginia State line on U.S. Highway 119, thence along U.S. Highway 119 to junction Pennsylvania Highway 711, thence along Pennsylvania Highway 711 to junction Pennsylvania Highway 653, thence along Pennsylvania Highway 653 to junction Pennsylvania Highway 53, thence along Pennsylvania Highway 53 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 220, thence along U.S. Highway 220 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction U.S. Highway 522, thence along U.S. Highway 522 to U.S. Highway 11, thence along U.S. Highway 11 to junction U.S. Highway 6, thence along U.S. Highway 6 to the New York-Pennsylvania State line, all points in New York on and west of a line beginning at the New York-Pennsylvania State line and extending along U.S. Highway 209 to junction U.S. Highway 9W, thence along U.S. Highway 9W to junction New York Highway 23, thence along New York Highway 23 to the New York-Massachusetts State line, points in Michigan (except the counties of Berrien, Cass, and Van Buren), to points in Tennessee in and west of the counties of Claiborne, Union, Knox, and Blount (80 mile radius of Columbus, Ohio, and Middletown, Ohio)*.

(2) *Iron and steel articles* which because of size or weight, require the use of special equipment, and *related iron and steel and iron and steel products* when their transportation is incidental to the transportation of iron and steel articles which because of size or weight require the use of special equipment, from points in New York on and south of a line beginning at the New York-Massachusetts State line west along U.S. Highway 44 to junction U.S. Highway 209, thence along U.S. Highway 209 to the New York-Pennsylvania State line, points in Pennsylvania on and south of a line beginning at the New York-Pennsylvania State line and extending along U.S. Highway 6, thence along U.S. Highway 6 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction U.S. Highway 522, thence along U.S. Highway 522 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction U.S. Highway 220, thence along

U.S. Highway 220 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 119, thence along U.S. Highway 119 to the Pennsylvania-West Virginia State line, points in New Jersey, Wilmington, Del., points in Maryland on and north of U.S. Highway 40 (Interstate Highway 70N), except points in Allegany and Garrett Counties, and points in West Virginia on and south of U.S. Highway 33 to points in Tennessee on and west of U.S. Highway 231 (Gettysburg, Pa., and Middletown, Ohio)*; (3) *Iron and steel articles* which because of size or weight, require the use of special equipment, and *related iron and steel and iron and steel products* when their transportation is incidental to the transportation of iron and steel articles which because of size or weight, require the use of special equipment, from points in West Virginia on and north of U.S. Highway 60, points in Maryland (except points in Allegany and Garrett Counties), points in Delaware, New Jersey, Pennsylvania, and New York to points in Iowa and Missouri (80 mile radius of Columbus, Ohio, Middletown, Ohio, Butler, and Warren Counties, Ohio, and points in Pennsylvania within 150 miles of Philadelphia, Pa., in the counties of Snyder, Juniata, Perry, Cumberland, Franklin, Adams, Dauphin, Fulton, Huntingdon, Mifflin, Centre, Clinton, Union, Lycoming, and Tioga)*.

(4) *Iron and steel articles* which because of size or weight, require the use of special equipment, and *related* iron and steel and iron and steel products when their transportation is incidental to the transportation of iron and steel articles which because of size or weight require the use of special equipment, from points in Kentucky on and east of a line beginning at the Ohio-Indiana State line on U.S. Highway 31W to junction Kentucky Highway 90, thence along Kentucky Highway 90 to junction U.S. Highway 31E, thence along U.S. Highway 31E to the Kentucky-Tennessee State line, Pennsylvania (except the counties of Erie, Warren, McKean, Potter, Crawford, Mercer, Venango, Forest, Elk, Clarion, and Cameron), West Virginia, and those in Ohio within 80 miles of Columbus, Ohio, in the counties of Holmes, Vinton, Knox, Tuscarawas, Coshocton, Delaware, Licking, Muskingum, Guernsey, Noble, Washington, Franklin, Perry, Fairfield, Morgan, Madison, Pickaway, Hocking, Athens, Meigs, Gallia, Lawrence, Jackson, Ross, Scioto, Pike, Fayette, Clinton, Greene, Highland, Butler, Warren, Clermont, Brown, Adams, Hamilton, Preble, Montgomery, and Clark, to points in Wisconsin (points in Butler and Warren Counties, Ohio, within 80 miles of Columbus, Ohio)*; (5) *Iron and steel articles*, which because of size or weight, require the use of special equipment, and *related iron and steel and iron and steel products* when their transportation is incidental to the transportation of iron and steel articles, which because of size or weight, require the use of special equipment, from points in Ohio within 80 miles of Columbus (except those in the counties of Putnam, Hancock, Seneca, Allen, Hardin, Wyandot, Mercer, and Auglaize), to points in Iowa and Missouri (Butler and Warren Counties, Ohio, and Middletown, Ohio)*.

(6) *Iron and steel articles*, which because of size or weight, require the use of special equipment, and *related iron and steel and iron and steel products* when their transportation is incidental to the transportation of iron and steel articles which because of size or weight, require the use of special equipment, from Kansas City, Mo., to points in Ohio within 80 miles of Columbus, those in the Lower Peninsula of Michigan (except points in the counties of Allegan, Ottawa, Muskegon, Oceana, Berrien, Cass, St. Joseph, Van Buren, and Kalamazoo), those in Kentucky on and east of U.S. Highway 127, those in Tennessee on and east of a line beginning at the Tennessee-Kentucky State line and extending along Interstate Highway 75 to junction U.S. Highway 129, thence along U.S. Highway 129 to the Tennessee-North Carolina State line and points in New York (points in Ohio on and south of U.S. Highway 40, points within a 80 mile radius of Columbus, Ohio, and Butler and Warren Counties, Ohio)*; (7) *Iron and steel articles*, from Kansas City, Mo., to points in Pennsylvania and West Virginia (those points in Franklin County, Ohio, west of U.S. Highway 40)*; (8) *Iron and steel articles*, which because of size or weight, require the use of special equipment or special handling, from points in Connecticut, Massachusetts, and Rhode Island to points in Iowa, Missouri, and those in Tennessee west of the counties of Scott, Morgan, Roan, McMinn, and Polk (Middletown, Ohio, Warren, and Butler Counties, Ohio, and points in Pennsylvania on and east of U.S. Highway 15 in Adams, York, Cumberland, Perry, Dauphin, Lebanon, and Lancaster Counties, Pa.)*.

(9) Iron and steel articles, which because of size or weight, require the use of special equipment, except materials and supplies used in, or in connection with, the construction, operations, repair, servicing, maintenance, and dismantling of pipelines, from points in Maine, New Hampshire, and Vermont to points in Iowa, Missouri, and those points in Tennessee west of the counties of Claiborne, Union, Knox, and Blount (Middletown, Ohio, Butler, and Warren Counties, Ohio, and those points and places in a Pennsylvania area bounded on the north by the New York-Pennsylvania State line, thence by highways beginning at junction of said State line, with U.S. Highway 11, thence along U.S. Highway 11 to junction U.S. Highway 522, thence along U.S. Highway 522 to junction U.S. Highway 322, thence along U.S. Highway 322 to junction U.S. Highway 219, thence along U.S. Highway 219 to the Pennsylvania-New York State line, including points on the indicated highways)*; (10) *Iron and steel articles*, which because of size or weight require the use of special equipment or special handling, from Kansas City, Mo., to points in Connecticut, Massachusetts, Rhode Island, New Jersey, Delaware, Maryland, (except points in Garrett County), those in Virginia on and east of a line beginning at the Virginia-West Virginia State line on U.S. Highway 250, thence along U.S. Highway 250 to junction Virginia Highway 151, thence along Virginia Highway 151 to U.S. Highway 29, thence along U.S. Highway 29 to junction U.S. Highway 501, thence along U.S. Highway 501 to the North Carolina-Virginia State line, and points in North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 301 to junction U.S. Highway 177, thence along U.S. Highway 177 to the North Carolina-South Carolina State line (points in Ohio within 80 miles of Columbus that are both south of U.S. Highway 40 but not in Franklin County, Ohio, and points in Pennsylvania on and east of U.S. Highway 15 in Adams, York, Cumberland, Perry, Dauphin, Lebanon, and Lancaster Counties, Pa.)*.

(11) *Iron and steel articles* which because of size or weight require the use of special equipment, except materials, and supplies, used in, or in connection with, the construction, operations, repair, servicing, maintenance, and dismantling of pipelines, from Kansas City, Mo., to points in Maine, New Hampshire, and Vermont (points within 80 miles of Columbus, Ohio, not in Franklin County, yet south of U.S. Highway 40, and points in that part of Pennsylvania on and east of U.S. Highway 219, to the junction with U.S. Highway 322, thence on and north of a line beginning at Grampian, Pa., and extending along U.S. Highway 322 through Clearfield and State College, Pa., to Lewistown, Pa., thence along U.S. Highway 522 to Selinsgrove, Pa., and on and west of U.S. Highway 11 to the New York-Pennsylvania State line, except the site of Curtiss Wright Corporation plant near Clearfield)*; and (12) *Steel reinforcing bars*, from the facilities of Bethlehem Steel Corporation, at Steelton, Pa., to points in Iowa, Missouri, Wisconsin, and those in Tennessee west of U.S. Highway 27 (Middletown, Ohio, and Butler and Warren Counties, Ohio)*. The purpose of this filing is to eliminate the gateways indicated by asterisks above. The purpose of this correction is to clarify the route description in (1).

No. MC 117574 (Sub-No. E43) (Correction), filed November 18, 1974 published in the FEDERAL REGISTER March 19, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Automatic loading equipment*, for sewage, water, and refuse treatment systems, the transportation of which because of size or weight requires the use of special equipment, between points in Pennsylvania (except points in Warren County, Pa.) on the one hand, and, on the other, points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and points in Colorado in south and west of the Counties of Mof-

fat, Rio Blanco, Garfield, Eagle, Summit, Park, Teller, El Paso, Pueblo, and Las Animas, points in Montana in and west of the Counties of Valley, Garfield, Rosebud, and Big Horn, and points in Texas on and south of a line beginning at the Texas-Oklahoma State line and proceeding in a southerly direction along U.S. Highway 287 to its junction with Interstate Highway 27, thence along Interstate Highway 27 to its junction with U.S. Highway 84, thence along U.S. Highway 84 to its junction with Interstate Highway 45, thence along Interstate Highway 45 to the Gulf of Mexico, and those points in Wyoming in and west of the Counties of Sheridan, Big Horn, Washakie, Fremont and Sweetwater.

(3) *Mechanical lifting equipment* for sewage, water, and refuse treatment systems, the transportation of which because of size or weight requires the use of special equipment, and *attachments and parts* for mechanical lifting equipment used in connection with the erection and construction of sewage, water, and refuse treatment systems (except commodities in bulk), between points in that part of Pennsylvania bounded on the east by a line beginning at the New York-Pennsylvania State line on Pennsylvania Highway 652, thence along Pennsylvania Highway 652 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction Interstate Highway 81, thence along Interstate Highway 81 to junction Interstate Highway 83, thence along Interstate Highway 83 to junction Pennsylvania Legislative Route 767, thence along Pennsylvania Legislative Route 767 to junction U.S. Highway 15, thence along U.S. Highway 15 to the Pennsylvania-Maryland State line, thence along the Pennsylvania-Maryland State line to its junction with West Virginia, thence along the Pennsylvania-West Virginia State line to junction U.S. Highway 119, thence along U.S. Highway 119 to its junction with Pennsylvania Highway 51, thence along Pennsylvania Highway 51 to its junction with Pennsylvania Highway 8, thence along Pennsylvania Highway 8 to junction U.S. Highway 62, thence along U.S. Highway 62 to the New York-Pennsylvania State line and thence along the New York line to the point of beginning including all points on the above-named routes (except points in Warren County, Pa.), on the one hand, and, on the other, points in that part of Alabama on and south of an east-west line beginning on U.S. Highway 78 at the Alabama-Georgia State line, to its junction with U.S. Highway 11, thence along U.S. Highway 11 to junction U.S. Highway 82, thence along U.S. Highway 82 to the Alabama-Mississippi State line, points in Arkansas on, south or west of the Arkansas River, points in Florida, points in Georgia on and south of a line beginning at the Georgia-South Carolina State line on Interstate Highway 85, thence along Interstate Highway 85 to junction Georgia Highway 20.

Thence along Georgia Highway 20 to the Georgia-Alabama State line, all points in Louisiana, points in Mississippi on and south of U.S. Highway 82, those in North Carolina on an east of a line beginning at the North Carolina-Virginia State line on U.S. Highway 29, thence along U.S. Highway 29 to junction U.S. Highway 220, thence along U.S. Highway 220 to junction U.S. Highway 1, thence along U.S. Highway 1 to the North Carolina-South Carolina State line, points in South Carolina on and south of a line beginning at U.S. Highway 1 at the North Carolina-South Carolina State line, thence along U.S. Highway 1 to junction U.S. Highway 76, thence along U.S. Highway 76 to junction U.S. Highway 29, thence along U.S. Highway 29 to the Georgia-South Carolina State line, and, those points in Virginia in the Counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Elizabeth City, Essex, Fluvanna, Goochland, Gloucester, Greensville, Halifax, Hanover, Henrico, Isle of Wight, Mathews, James City, King and Queen, King William, Louisa, Lunenburg, Mecklenburg, Middlesex, Nansemond, Nottoway, Norfolk, New Kent, Pittsylvania, Powhatan, Prince Edward, Prince George, Princess Anne, Southampton, Spotsylvania, Surry, Sussex, Warwick, and York, and points in the Independent Cities located in the Virginia area of those named counties (facilities of Fulton Industries, at or near McConnellsburg, Pa.*). The purpose of this filing is to eliminate the gateways indicated by the asterisks above. The purpose of this partial correction is to complete the territorial descriptions.

No. MC 117574 (Sub-No. E45) (Correction), filed May 31, 1974, published in the FEDERAL REGISTER, March 26, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (other than truck tractors), *tractor attachments, incidental machinery* used with such tractors, and *parts* of the above-described commodities when moving therewith (except such commodities which because of size or weight require the use of special equipment), between points in New York in and east of Erie, Wyoming, and Allegany Counties and in and west of Broome, Delaware, Schoharie, Albany, Saratoga, and Washington Counties, on the one hand, and, on the other, points in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, those points in South Carolina in and west of Lee, Sumter, Chesterfield, Darlington, Clarendon, Berkelle, and Charleston Counties, those points in Louisiana in and east of the parishes of West Feliciana, Pointe Coupee, Iberville, Iberia, and St. Mary's, those in Indiana, on and east of a line from the Indiana-Ohio State line extending along U.S. Highway 24, Interstate Highway 69, and Indiana Highway 67 to the Illinois-Indiana State line, and those in West Virginia on and west of a line beginning at the Virginia-West Virginia State line and extending along West Virginia Highway 16 to junction U.S. Highway Alternate 50, thence along U.S. Highway Alternate 50 to junction West Virginia Highway 2, thence along West Virginia Highway 2 to junction West Virginia Highway 16, thence along West Virginia Highway 16 to junction West Virginia Highway 88, thence along West Virginia Highway 88 to the West Virginia-Pennsylvania State line, including all points in Wheeling, W. Va. The purpose of this filing is to eliminate the gateway of Nunda, N.Y. The purpose of this correction is to expand the territory description.

No. MC 117574 (Sub-No. E46) (Correction), filed November 18, 1974. Published in the FEDERAL REGISTER, March 26, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (5) *Industrial and construction machinery and equipment, and self-propelled agricultural, industrial, and construction machinery and equipment*, each weighing 15,000 pounds or more (when transported on trailers), (except tractors with vehicle beds, bed frames, and fifth wheels), from points in Delaware (except Sussex County), and Maryland (except points west and south of Baltimore County and south of Queen Annes County), to points in Florida, Georgia, and South Carolina (except points north of a line beginning at Georgetown and extending along U.S. Highway 521, to junction U.S. Highway 76, thence along U.S. Highway 76 to junction Interstate Highway 26, thence along Interstate Highway 26 to the South Carolina-North Carolina State line (facilities of Sperry Rand Corp., at Belleville, Mountville, and New Holland, Pa.)*.

(6) *Industrial and construction machinery and equipment*, and *self-propelled agricultural, industrial, and construction machinery and equipment*, each weighing 15,000 pounds or more (when transported on trailers) (except tractors with vehicle beds, bed frames, and fifth wheels), from points in Virginia, in the counties in and east of Frederick, Warren, Rappahannock, Culpeper, Orange, Louisa, Goochland, Powhatan, Amelia, Nottoway, and Brunswick, to points in Arizona, California, Colorado, Connecticut, Idaho, Kansas (except points in and east of the counties of Chautauqua, Elk, Wilson, Woodson, Coffey, Franklin, and Johnson), Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey (except points in and south of the counties of Burlington, Camden, Gloucester, Atlantic, Salem, Cumberland, and Cape May), New Mexico, New York (except points in and west of the counties of

Orleans, Genesee, Wyoming, and Allegany), North Dakota, Oklahoma (except points in and east of the counties of Osage, Pawnee, Payne, Lincoln, Pottawatomie, Cleveland, McClain, Grady, Comanche, and Tillman), Oregon, Rhode Island, South Dakota, Texas (except points in and south of the counties of Hardeman, Cottle, Dickens, Crosby, Garga, Lynn, Terry, and Yoakum), Utah, Vermont, Washington, and Wyoming (facilities of Sperry Rand Corp., at Belleville, Mountville, and New Holland, Pa.) *.

(7) *Industrial and construction machinery and equipment, and self-propelled agricultural, industrial, and construction machinery and equipment,* each weighing 15,000 pounds or more, (when transported on trailers), (except tractors with vehicle beds, bed frames, and fifth wheels), from points in Virginia on and east of Interstate Highway 95 to points in Illinois (except points east and south of a line beginning at the Illinois-Missouri State line and extending along U.S. Highway 66 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Illinois-Indiana State line), Indiana (except points south of U.S. Highway 30), Iowa, Michigan, Minnesota, Missouri, (except points south of Interstate Highway 44), New York (except points in and east of the counties of Monroe, Livingston, and Steuben), and Pennsylvania (except points south of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 322 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 202, thence along U.S. Highway 202 to the Delaware River) (facilities of Sperry Rand Corp., at Belleville, Mountville, and New Holland, Pa.) *; (9) *Industrial and construction machinery and equipment, and self-propelled agricultural, industrial and construction machinery and equipment,* each weighing 15,000 pounds or more (when transported on trailers) (except tractors with vehicle beds, bed frames, and fifth wheels), from points in North Carolina in and east of the counties of Rockingham, Guilford, Randolph, Moore, Hoke, and Robeson, to points in California, Colorado (except south of U.S. Highway 6), Idaho, Montana, Nebraska (except points south of U.S. Highway 6), Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (facilities of Sperry Rand Corp., at Belleville, Mountville, and New Holland, Pa.) *. The purpose of this filing is to eliminate the gateways indicated by asterisks above. The purpose of this filing is to partially correct the filing, the remainder of this filing is correct.

No. MC 119493 (Sub-No. E1), filed June 3, 1974. Applicant: MON KEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Manufactured animal and poultry feeds, dehydrated and suncured alfalfa,* and *such oat and corn by-products* as are used as animal or poultry feeds, or ingredients thereof, from points in that part of Illinois on and east of a line beginning at the Illinois-Kentucky State line extending along U.S. Highway 57 to junction U.S. Highway 74, thence along U.S. Highway 74 to junction U.S. Highway 280, thence along U.S. Highway 280 to junction Illinois Highway 2, thence along Illinois Highway 2 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction U.S. Highway 90, thence along U.S. Highway 90 to the Illinois-Indiana State line, to points in Arkansas and Louisiana, to Memphis, Tenn., and points in that part of Mississippi on and west of a line beginning at the Mississippi-Tennessee State line extending along U.S. Highway 55 to junction U.S. Highway 49, thence along U.S. Highway 49 to the Louisiana-Mississippi State line. The purpose of this filing is to eliminate the gaseway of Missouri.

No. MC 119493 (Sub-No. E3), filed June 4, 1974. Applicant: MON KEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Manufactured animal and poultry feeds, and cottonseed meal, soybean meal and such byproducts of cottonseed and soybeans* as are used as animal and poultry feeds, from points in that part of Iowa on and north of a line beginning at the Illinois-Iowa State line extending along Iowa Highway 92 to junction U.S. Highway 34, thence along U.S. Highway 34 to the Iowa-Nebraska State line, to points in Oklahoma and to points in that part of Kansas on and south of a line beginning at the Missouri-Kansas State line extending along U.S. Highway 59 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction U.S. Highway 35, thence along U.S. Highway 35 to junction U.S. Highway 54, thence along U.S. Highway 54 to the Kansas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Missouri.

No. MC 119493 (Sub-No. E4), filed June 3, 1974. Applicant: MON KEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Manufactured animal and poultry feeds,* and *ingredients* used in the manufacture thereof, from points in Arkansas, Louisiana, and Mississippi, to points in that part of Minnesota west of north of a line beginning at the Minnesota-Iowa State line extending along U.S. Highway 35 to junction U.S. Highway 12, thence along U.S. Highway 12 to the Wisconsin-Minnesota State line. The purpose of this filing is to eliminate the gateway of Joplin, Mo.

No. MC 119493 (Sub-No. E6), filed June 3, 1974. Applicant: MON KEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Manufactured animal and poultry feeds* (except in bulk, in tank or hopper-type vehicles), from points in Texas south of U.S. Highway 40 to points in Minnesota. The purpose of this filing is to eliminate the gateway of Joplin, Mo.

No. MC 119493 (Sub-No. E7), filed June 3, 1974. Applicant: MON KEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meal and bone* scraps, tankage, hydrolized feather meal, and dried blood, in bags, as are used as animal and poultry feeds (except in liquid form, in bulk, in tank or hopper-bottom vehicles), from points in that part of Texas east of a line beginning at the United States-Mexico International Boundary line extending along U.S. Highway 281 to junction U.S. Highway 59, thence along U.S. Highway 59 to junction U.S. Highway 77, thence along U.S. Highway 77 to junction Texas Highway 71, thence along Texas Highway 71 to junction U.S. Highway 35, thence along U.S. Highway 35 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Texas Highway 24, thence along Texas Highway 24 to the Texas-Oklahoma State line, to points in that part of Nebraska east of a line beginning at the South Dakota-Nebraska State line extending along U.S. Highway 385 to junction Nebraska Highway 2, thence along Nebraska Highway 2 to junction U.S. Highway 281, thence along U.S. Highway 281 to the Nebraska-Kansas State line. The purpose of this filing is to eliminate the gateway of Missouri.

No. MC 119493 (Sub-No. E9), filed June 3, 1974. Applicant: MON KEM COMPANY, INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: J. J. Knotts, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meal and bone scraps, tankage, hydrolized feather meal,* and *dried blood,* in bags, such as are used as animal and poultry feeds, from points in Texas to points in Illinois, restricted (1) against the transportation of traffic from Joplin, Mo., to Beloit, Wis., St. Louis, and points in St. Louis County, Mo., and East St. Louis, Springfield, Rockford, and Freeport, Ill., and points in the Chicago, Ill., commercial zone, as defined by the Commission, and (2) against transportation of traffic in liquid form, in bulk, in tank or hopper-bottom vehicles. The purpose of this filing is to eliminate the gateway of Missouri.

No. MC 119531 (Sub-No. E151), filed June 4, 1974. Applicant: SUN EXPRESS, INC., 5319 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Paul F. Beery, 8 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Supplies,* used in the manufacture of pulpboard and pulpboard products (except commodities in bulk), from

points in West Virginia on and west of U.S. Highway 119, and on and south of West Virginia State Highway 7 to (a) the plant and warehouse sites of Weyerhauser Co., at Columbus, Ind.;* (b) Chicago, Ill.,** and (c) Rock Island, Ill.;** The purpose of this filing is to eliminate the gateways of *Cincinnati, Ohio, and **Cincinnati, Ohio, and Columbus, Ind.

No. MC 119531 (Sub-No. E190), filed May 25, 1974. Applicant: SUN EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from Washington, Pa., to points in Wisconsin, Minnesota, Iowa, Illinois, and that part of Kentucky on and west of a line beginning at Hawesville, Ky. extending along Kentucky State Highway 69 to Hartford, Ky. and thence along U.S. Highway 231 to Bowling Green, Ky. and thence along U.S. Highway 31 west to the Kentucky-Tennessee State line. The purpose of this filing is to eliminate the gateway of Lopel, Ind.

No. MC 119531 (Sub-No. E270), filed May 25, 1974. Applicant: SUN EXPESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Paul F. Beery, 8 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper Cartons*, from Rockdale, Ill., to points in Tennessee on and east of Tennessee Highway 56. The purpose of this filing is to eliminate the gateway of Cincinnati, Ohio.

No. MC 119934 (Sub-No. E8) (Correction), filed May 10, 1974, published in the FEDERAL REGISTER March 26, 1975. Applicant: ECOFF TRUCKING, INC., 625 East Broadway, Fortville, Ind. 46040. Applicant's representative: Robert W. Loser II, 320 N. Meridian St., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals* (except silicate of soda), in bulk, in tank vehicles, from Anderson, Ind., to points in Iowa, Louisiana, Minnesota, and points in that part of Kansas on, north, and west of a line beginning at the Missouri-Kansas State line extending along Kansas Highway 68 to junction U.S. Highway 169, thence along U.S. Highway 169 to junction Kansas Highway 39, thence along Highway 39 to junction Kansas Highway 96, thence along Kansas Highway 96 to junction Kansas Highway 99, thence along Kansas Highway 99 to the Kansas-Oklahoma State line, and points in that part of Oklahoma on, west, and south of a line beginning at the Kansas-Oklahoma State line, thence along U.S. Highway 75 to Tulsa, Okla., thence along the Muskogee Turnpike to junction U.S. Highway 40, thence along U.S. Highway 40 to the Oklahoma-Arkansas State line, restricted against the transportation of traffic destined to points in Canada. The purpose of this filing is to eliminate the gateway of the plant site of the Central Chemical Co., Division of Wilson & Co., at or near Elwood, Ill. The purpose of this correction is to correct the territorial description.

No. MC 123685 (Sub-No. E7), filed May 15, 1974. Applicant: PEOPLES CARTAGE, INC., 8045 Navarre Rd. SW., Massillon, Ohio 44646. Applicant's representative: James W. Muldoon (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard, pulpboard products, and paper wrappers*, (1) from those points in Ohio on, south and east of a line beginning at the Ohio-Pennsylvania State line and extending along Interstate Highway 80 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Interstate Highway 77, thence along Interstate Highway 77 to junction Pennsylvania Highway 584, thence along Pennsylvania Highway 584 to junction Interstate Highway 94, thence along Interstate Highway 94 to junction U.S. Highway 127, thence along U.S. Highway 127 to the Michigan-Ohio State line, and points in Illinois on and west of U.S. Highway 66, to points in Michigan and Illinois, (2) from those points in Ohio on, north and east of a line beginning at Lake Erie and extending along Ohio Highway 83 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Ohio-Pennsylvania State line, to those points in the Upper Peninsula of Michigan, including Machinaw City, and those points in Illinois on, west and south of a line beginning at the Illinois-Wisconsin State line and extending along U.S. Highway 51 to junction U.S. Highway 24, thence along U.S. Highway 24 to the Illinois-Indiana State line, (3) from points in Wayne, Stark, Summit, Portage, Trumbull, Mahoning, Columbiana, Jefferson, Carroll, Harrison, and Tuscarawas Counties, Ohio, to points in Illinois, (4) from points in Wayne County, Ohio, to those points in Michigan on and north of a line beginning at Lake Michigan and extending along Interstate Highway 94 to junction U.S. Highway 131, thence along U.S. Highway 131 to junction Michigan Highway 27, thence along Michigan Highway 27 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction Michigan Highway 46, thence along Michigan Highway 46 to junction U.S. Highway 27, thence along U.S. Highway 27 to Lake Huron, and those points in Indiana on and west of a line beginning at the Michigan-Indiana State line and extending along Indiana Highway 19 to junction Interstate Highway 74, thence along Interstate Highway 74 to the Indiana-Ohio State line, to points in Michigan and Illinois. The purpose of this filing is to eliminate the gateway of the facilities of the Grief Board Corporation, in Stark County, Ohio.

No. MC 123685 (Sub-No. E14), filed May 15, 1974. Applicant: PEOPLES CARTAGE, INC., 8045 Navarre Road SW., Massillon, Ohio 44646. Applicant's representative: Mr. James Muldoon, 50 West Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, in dump vehicles, from points in Wayne County, Ohio, except Wooster, to points in Indiana, Illinois, Kentucky, Michigan, New York, and West Virginia. The purpose of this filing is to eliminate the gateway of Dundee, Ohio.

No. MC 129631 (Sub-No. E1), filed May 15, 1974. Applicant: PACK TRANSPORT, INC., 3975 S. 300 West St., Salt Lake City, Utah 84107. Applicant's representative: Gwyn D. Davidson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, restricted against the transportation of commodities which because of their size or weight require the use of special equipment, from points in Coconino, Navajo, Apache, Yavapai, and Mohave Counties, Ariz., to points in Idaho and Wyoming, restricted against service from points north of U.S. Highway 66 in Mohave and Coconino Counties, Ariz., to points in that part of Idaho on, west and south of a line beginning at the Idaho-Nevada State line extending along U.S. Highway 93 to junction U.S. Highway 80, thence along U.S. Highway 80 to the Idaho-Oregon State line. The purpose of this filing is to eliminate the gateways of points in Daggett, Rich and Summit Counties, Utah, and points in Lincoln County, Wyo.

No. MC 129631 (Sub-No. E3), filed June 2, 1974. Applicant: PACK TRANSPORT, INC., 3975 S. 2nd West, Salt Lake City, Utah 84104. Applicant's representative: Gwyn D. Davidson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and siding materials*, restricted against the transportation of commodities which because of their size or weight require special equipment, from points in Mohave County, Ariz. to points in Wyoming. The purpose of this filing is to eliminate the gateways of Salt Lake City, Woods Cross, Ogden, and North Ogden, Utah.

No. MC 129631 (Sub-No. E10), filed June 3, 1974. Applicant: PACK TRANSPORT, INC., 3975 S. 2nd West, Salt Lake City, Utah 84104. Applicant's representative: Gwyn D. Davidson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *lumber mill products*, restricted against the transportation of commodities which because of their size or weight require special equipment, from points in Washington to points in Arizona, restricted against the service from Cowlitz, Clark, Lewis, and Thurston Counties, Wash., to Yuma County, Ariz. The purpose of this filing is to eliminate the gateway of Oneida, Caribou, Bear Lake and Franklin Counties, Idaho.

No. MC 129631 (Sub-No. E11), filed June 2, 1974. Applicant: PACK TRANS-

PORT, INC., 3975 S. 2nd West, Salt Lake City, Utah 34104. Applicant's representative: Gwyn D. Davidson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *lumber products*, from points in that part of Washington in and west of Klickitat, Skamania, Lewis, Pierce, King, Snohomish, Skagit, and Whatcom Counties, to points in Arizona. The purpose of this filing is to eliminate the gateway of points in that part of Utah on and south of U.S. Highway 40, except Blanding, Ephraim, and Escalante, Utah.

No. MC 129631 (Sub-No. E19), filed June 2, 1974. Applicant: PACK TRANSPORT, INC., 3975 S. 300 West St., Salt Lake City, Utah 84107. Applicant's representative: Gwyn D. Davidson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, restricted to building materials, from points in Box Elder, Cache, Davis, Morgan, Rich, Summit, Salt Lake, and Weber Counties, Utah (except Centerville, Utah) to points in Arizona and New Mexico. The purpose of this filing is to eliminate the gateways of points in Utah on and south of U.S. Highway 40 (except Blanding, Ephraim, and Escalante, Utah).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11343 Filed 4-29-75;8:45 am]

[Notice No. 33]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 25, 1975.

The following publications include motor carrier, water carrier, broker, freight forwarder and rail poceedings indexed as follows: (1) Grants of authority requiring republication prior to certification; (2) notices of filing of petitions for modification of existing authorities; (3) new operating right's applications directly related to and processed on a consolidated record with finance applications filed under sections 5(2) and 212 (b); (4) notices of filing of sections 5(2) and 210a (b) finance applications; and (5) notices of filing of section 212(b) transfer applications.

Each applicant (except as otherwise specifically noted) states that there will be no significant effect on the quality of the human environment resulting from approval of its application in compliance with the requirements of 49 CFR 1100.250.

Protests to the granting of the requested authority must be filed with the Commission on or before May 30, 1975 (unless otherwise specified). Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest should comply with section 247(d) or section 240(c) as appropriate of the Commission's general rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and a detailed description of the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest (except for petitions and Finance Dockets under Rule 40 requiring the original and six (6) copies of the protest) shall be filed with the Commission, and a copy shall be served concurrently upon applicant's or petitioner's representative, or applicant or petitioner if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d) (4) or section 240(c) (4) of the special rules, and shall include the certification required therein.

MC 107583 (Sub-No. 50) (Republication), filed July 28, 1971, and published in the FEDERAL REGISTER issue of September 10, 1971, and republished this issue. Applicant: SALEM TRANSPORTATION CO., INC., 133-03 35th Avenue, Flushing, N.Y. 11354. Applicant's representative: George H. Rosen 265 Broadway, P.O. Box 348, Monticello, N.Y. 11354. A Report and Order of the Commission, Division 1, Acting as an Appellate Division, dated March 26, 1975, and served April 7, 1975, finds, on reconsideration, that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, (A) of *passengers and their baggage*, in special operations, in nonscheduled, door-to-door service, between the site of the Philadelphia International Airport at or near Philadelphia, Pa., on the one hand, and, on the other, Atlantic City, Ventnor, Margate, Longport Borough, Absecon, Pleasantville, Northfield, Linwood, and Somers Point, N.J., and (B) (1) of *passengers and their baggage*, in special and charter operations, in nonscheduled, door-to-door service, limited to the transportation of not more than 11 passengers in one vehicle, not including the driver, and not including children under 10 years of age who do not occupy a seat or seats, (2) of *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) when moving in the same vehicle with passengers, restricted against the transportation of packages or articles weighing more than 100 pounds in the aggregate from one consignor at one location to one consignee at one location during a single day, and (3) of *unaccompanied baggage* when moving in the same vehicle with passengers, between points in that part of Pennsylvania within the Philadelphia, Pa., commercial zone, on the one hand, and, on the other, Atlantic City, Ventnor, Margate, Longport, Borough, Absecon, Pleasantville, Northfield, Linwood, and Somers Point, N.J., subject to the condition that the authority granted herein, to the extent it duplicates authority presently held by applicant, shall not be construed as conferring more than a single operating right; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commision's rules and regulations thereunder.

The purpose of this republication is to indicate that General commodities, with exceptions and restrictions in (B) (2) above, has been granted in lieu of express, and to indicate that a weight limitation has been removed from the authority to transport unaccompanied baggage in (B) (3) above. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a Certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

MC 108835 (Sub-No. 28) (Republication), filed May 17, 1974, and published in the FEDERAL REGISTER issue of October 17, 1974, and republished this issue. Applicant: HYMAN FREIGHTWAYS, INC., 3030 Harbor Lane, Plymouth (Minneapolis), Minn. 55427. Applicant's representative: Stanley C. Olsen, Jr., 1000 First National Bank Building, Minneapolis, Minn. 55402. An Order of the Commission, Operating Rights Board, dated March 31, 1975, and served April 16, 1975, finds, that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *display fireworks*, between points in Iowa, Minnesota, those in South Dakota on and east of U.S. Highway 281, those points in Illinois located in the Davenport, Iowa-Rock Island and Moline, Ill., Commercial Zone as defined by the Commission, Superior, Wis., St. Joseph and Kansas City, Mo., and Lincoln, Wahoo and Omaha, Nebr., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; The purpose of this republication is to indicate a modification to the territorial description. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the

lack of proper notice of the authority described above, issuance of a Certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 106010 (Notice of filing of petition to modify a certificate), filed April 15, 1975. Petitioner: CHANDLER TRANSPORTATION, INC., c/o M. F. Rolla, 201 East 42nd St., New York, N.Y. 10017. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Petitioner holds a motor *common carrier* certificate in No. MC 106010, issued January 17, 1973, authorizing transportation, as pertinent, over irregular routes, of *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between New York, N.Y., on the one hand, and, on the other, points in New Jersey (not including points in Burlington, Mercer, Hunterdon, Warren, Cape May, Cumberland, Gloucester, Salem, Atlantic, and Ocean Counties, N.J.).

By the instant petition, petitioner seeks to modify the territorial description in the above authority so as to read: between points in the New York, N.Y. Commercial Zone as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act (the "exempt" zone), and those points in New Jersey any part of which is within 5 miles of New York, N.Y., on the one hand, and, on the other, points in New Jersey (except points in Burlington, Mercer, Hunterdon, Warren, Cape May, Cumberland, Gloucester, Salem, Atlantic and Ocean Counties, N.J.); or, in the alternative, that the Commission issue its appropriate order that the petitioner be empowered and permitted to designate as its terminal area, all points within which local operations may be conducted in the New York, N.Y., Commercial Zone as established by the Commission, including the Newark International Airport. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 115162 (Sub-No. 234) (Notice of filing of petition to add an origin), filed April 9, 1975. Petitioner: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Petitioner's representative: Robert E. Tate (same address as applicant). Petitioner holds a motor *common carrier* certificate in No. MC 115162 (Sub-No. 234), issued September 14, 1972, authorizing transportation, over irregular routes, of *Treated poles, treated piling, treated lumber, treated cross arms, and treated cross ties*, from points in Mississippi, to points in the United States (except Alaska, Hawaii, Montana, Wyoming, Idaho, Washington, Oregon, California, Nevada, Utah, Arizona, and Mississippi).

By the instant petition, petitioner seeks to add points in Alabama as an origin in the above authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 116092 (Sub-No. 2) (Notice of filing of petition to modify commodity description), filed April 16, 1975. Petitioner: E. J. PERSONS TRANSPORT LTD., 785 Main St., Cowansville, Quebec, Canada. Petitioner's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. Petitioner holds a motor *common carrier* certificate in No. MC 116092 (Sub-No. 2), issued December 5, 1960, authorizing transportation, over irregular routes, of *Imported wool*, between ports of entry on the United States-Canada International Boundary line, at or near Champlain and Rouses Point, N.Y., and Highgate Springs, Richford, and Troy, Vt., on the one hand, and, on the other, Albany, N.Y., and Gilbertville, Hudson, and Maynard, Mass.

By the instant petition, petitioner seeks to modify the above commodity description so as to read, *Imported wool, paper makers' felts*, and *materials and supplies* used in the manufacture and treatment thereof (except commodities in bulk). Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 124211 (Sub-No. 236) (Notice of filing of petition to modify territorial description), filed April 7, 1975. Petitioner: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, Nebr. 68101. Petitioner's representative: Thomas L. Hilt (same address as petitioner). Petitioner holds a motor *common carrier* certificate in No. MC 124211 (Sub-No. 236), issued October 25, 1974, authorizing transportation, over irregular routes, of (1) *cellular products, athletic and sporting goods, plastic, plastic products, plastic coated products*, and *fiberglass products, and* (2) *commodities* used in the production, distribution and sale of the commodities described in (1) above (except hides, skins, and tannery products and supplies, and those commodities which because of size and weight require the use of special equipment): (a) Between points in Maricopa County, Ariz., Orange County, Calif., and Middlesex County, Mass., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); and (b) Between points in Coweta County, Ga., Grand County, Ind., Ionia and Oakland Counties, Mich., Lowndes County, Miss., Lucas and Tuscarawas Counties, Ohio, and Westmoreland County, Pa., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Iowa, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, restricted against the transportation of commodities in bulk, and further restricted to shipments originating at or destined to facilities utilized by The General Tire & Rubber Company. By the instant petition, petitioner seeks to add points in Los Angeles County, Calif., and Essex County, Mass., as terminal points in (a) above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 135867 (Sub-No. 1) (Notice of filing of petition to modify territorial description), filed April 3, 1975. Petitioner: H.T.L., INC., P.O. Box 122, Fairfield, Ala. 35064. Petitioner's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Petitioner holds a motor *contract carrier* permit in No. MC 135867 (Sub-No. 1), issued March 10, 1975, authorizing transportation, over irregular routes, of (1) *Steel* and *steel products*, From the plant and warehouse sites of Hanna Steel Corporation, at Fairfield and Gadsden, Ala., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennesssee, and Texas; and (2) *Equipment, materials, and supplies* used in the processing of steel and steel products (except commodities in bulk and except iron and steel articles from Nashville, Tenn.), From points in the above-named States, to the plant and warehouse sites of Hanna Steel Corporation, at Fairfield and Gadsden, Ala., under a continuing contract, or contracts, with Hanna Steel Corporation, at Fairfield, Ala. By the instant petition, petitioner seeks to add points in Virginia and West Virginia to the above territorial description, so as to read: (1) *Steel* and *steel products*, From the plant and warehouse sites of Hanna Steel Corporation, at Fairfield, and Gadsden, Ala., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and (2) *Equipment, materials, and supplies* used in the processing of steel and steel products (except commodities in bulk and except iron and steel articles from Nashville, Tenn.), From points in the above-named States, to the plant and warehouse sites of Hanna Steel Corporation, at Fairfield and Gadsden, Ala. under a continuing contract, or contracts, with Hanna Steel Corporation, at Fairfield,

Ala. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 22005 (Sub-No. 1), filed March 7, 1975. Applicant: DON-DEE TRUCKING CORPORATION, 530 Duncan Avenue, Jersey City, N.J. 07306. Applicant's representative: H. Neil Garson, 1400 North Uhle Street, Suite 404, Arlington, Va. 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Westchester and Nassau Counties, N.Y. and points in that part of the New York, N.Y. Commercial Zone as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of Section 203(b)(8) of the Interstate Commerce Act (the "exempt" zone) and points in that part of New Jersey within 5 miles of New York, N.Y., and all of any municipality in New Jersey any part of which is within 5 miles of New York, N.Y., on the one hand, and, on the other, points in Essex, Hudson, Passaic, Union, Mercer, Somerset, Middlesex, Morris, and Bergen Counties, N.Y.; and (2) *gypsum products*, from Linden, N.J., to New Haven, Conn. and points in Nassau and Suffolk Counties, N.Y. The purpose of this filing is to eliminate gateways at points in Mercer, Somerset, Middlesex, Morris and Passaic Counties, N.J. and points in the New York, N.Y. Commercial Zone. This application is a gateway elimination request filed pursuant to the Commission's Policy Statement in Ex Parte No. 55 (Sub-No. 8), noticed in the FEDERAL REGISTER issue of December 9, 1974, and is directly related to MC-F-12280 published in the FEDERAL REGISTER of August 7, 1974.

No. MC 95876 (Sub-No. 171), filed February 3, 1975. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, Minn. 56301. Applicant's representative: Donald A. Morken, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(1) *Contractors' and construction equipment, materials and supplies*, (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment, and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery*, when moving as commodities which because of size or weight require the use of special equipment or special handling, between points in Iowa and points in North Dakota. The purpose of this filing is to eliminate the gateway of points in Minnesota. (2)(1) *Contractors' and construction equipment, materials and supplies* (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and related machinery, when moving as commodities which because of size or weight require the use of special equipment or special handling; (A) between points in Iowa on the one hand, and, on the other, points in Wisconsin on, north and west of U.S. Highway 16 beginning at La Crosse, then east on U.S. Highway 16 to its junction with State Highway 173, then north on State Highway 173 to the junction with State Highway 80, then north on State Highway 80 to Marshfield, then north on State Highway 13 to Ashland, Wis. and ending at Ashland, Wis.; and (B) between points in Iowa, on the one hand, and, on the other, points in Wisconsin east and south of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota.

(3) *Doors*, when moving as contractors' and construction equipment, materials and supplies, (A) from points in South Dakota, to points in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia and West Virginia and the Lower Peninsula of Michigan and; (B) from points in South Dakota, to points in Kentucky, Kansas, Missouri, Nebraska and North Dakota. The purpose of this filing is to eliminate the gateways of points in Minnesota and New London, Wis. (4)(1) *Contractors' and construction equipment, materials and supplies* (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment, and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery*, when moving as commodities which because of size or weight require the use of special equipment or special handling, (A) between points in Iowa and points in South Dakota on and north of U.S. Highway 14 beginning at the South Dakota-Minnesota State line, then west on Highway 14 to the junction with U.S. Highway 16, then west on U.S. Highway 16 to the South Dakota-Wyoming State line and (B) between points in Iowa and points in South Dakota south of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota.

(5)(1) *Contractors' and construction equipment, materials, and supplies*, (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment, and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery*, when moving as commodities which because of size or weight require the use of special equipment or special handling, (A) between points in Iowa on and east of U.S. Highway 69 and points in South Dakota on and north of State Highway 44 beginning at the South Dakota-Iowa State line, then west on Highway 44 to the junction with U.S. Highway 183, then south on U.S. Highway 183 to the South Dakota-Nebraska State line and (B) between points in Iowa west of the described area and points in South Dakota south and east of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota. (6)(1) *Contractors' and construction equipment, materials and supplies* (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment, and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery*, when moving as commodities which because of size or weight require the use of special equipment or special handling; (A) between points in Wisconsin on and north of U.S. Highway 18 on the one hand, and, on the other, points in Iowa on and west of U.S. Highway 69 and (B) between points in Iowa east of the above described area and points in Wisconsin south of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota.

(7)(1) *Contractors' and construction equipment, materials and supplies* (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and *related machinery*, when moving as commodities which because of size or weight require the use of special equipment or special handling, (A) between points in Wisconsin, on the one hand, and, on the

other, points in North Dakota, South Dakota and points in Iowa, on and west of U.S. Highway 75 beginning at Sioux City, Iowa, then north on U.S. Highway 75 to the junction with Iowa Highway 60, then north on Iowa Highway 60 to the Minnesota State line and (B) between points in Wisconsin, on the one hand, and, on the other, points in Iowa, east and south of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota. (8) (1) *Contractors' and construction equipment, materials and supplies* (except commodities in bulk and cement), *heavy machinery, transformers, generators, tanks, boilers, smoke stacks, power plant equipment, electrical equipment, and commodities* which because of size or weight require the use of special equipment or special handling, and (2) *self-propelled articles* each weighing 15,000 pounds or more and related machinery, when moving as commodities which because of size or weight require the use of special equipment or special handling, (A) between points in Iowa located in Dubuque, Clayton, Allamakee, Howard, Mitchell, Worth and Winnebago Counties, Iowa and points in South Dakota; (B) between points in Iowa south and west of the above described area and points in South Dakota. The purpose of this filing is to eliminate the gateway of points in Minnesota.

(9) *Iron and steel articles*, when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require the use of special equipment or special handling, (A) from points in Porter and Lake Counties, Ind., and Cook and DuPage Counties, Ill., to points in Iowa on and north and west of Iowa Highway 4 beginning at the Minnesota-Iowa State line near Esterville, then south to U.S. Highway 18, then west on U.S. Highway 18 to U.S. Highway 71, then south on U.S. Highway 71 to U.S. Highway 20, then west on U.S. Highway 20 to the Nebraska State line, points in North Dakota, points in South Dakota, points in Wisconsin on and west of U.S. Highway 53, beginning at La Crosse, Wisconsin, then north to Osseo, Wisconsin, then north on State Highway 27 to Hayward, then north on U.S. Highway 63 to Ashland, Wis. and the shores of Lake Superior and (B) points in Iowa east and south of the above described areas and points in Wisconsin east and south of the above described areas. The purpose of this filing is to eliminate the gateway of points in Minnesota. (10) *Building materials* (except electrical cable tray systems) when moving as contractors' and construction materials or as commodities which because of size or weight require the use of special equipment or special handling, (A) from Florence, Ky., to points in North Dakota and South Dakota, points in Iowa on and north of U.S. Highway 20 beginning at Sioux City, Iowa, then east on U.S. Highway 20 to the junction of U.S. Highway 65, then north on U.S. Highway 65 to the Minnesota State line, points in Wisconsin on and west of U.S. Highway 53 beginning at La Crosse, Wis., then north on U.S. Highway 53 to Osseo, Wis., then north on Wisconsin Highway 27 to Hayward, then north on U.S. Highway 63 to Ashland and ending at that point and (B) from Florence, Ky., to points in Iowa south and e ast of the above described areas and in Wisconsin points east of the described areas. The purpose of this filing is to eliminate the gateway of points in Minnesota.

(11) *Roofing, siding insulating materials and floor covering* (except carpet and carpet padding), which because of size or weight require the use of special equipment or special handling, (A) from the plant sites of Flintkote Company and Certain-teed Products Corp. at Chicago Heights, Ill., the plant sites of Bird and Son and Celotex at Chicago, Ill., the plant site of GAF Corp. at Joliet, Ill. and the plant site of Lloyd A. Fry Roofing Company at Summit, Ill., to points in North Dakota, South Dakota and points in Wisconsin on and west of Highway 61 beginning near Dubuque, Iowa, northerly along Highway 61 to its junction with Highway 27 near Westby, thence north on Highway 27 to its junction with I-94 near Black River Falls, thence I-94 to Eau Claire, thence north on Highway 53 to its junction with Highway 63 near Trego, thence northeasterly on Highway 63 to Ashland and (B) from the above named plant sites, to points in Wisconsin that are east of the above described area. The purpose of this filing is to eliminate the gateways of points in Iowa and Minnesota. (12) *Building materials, cement and asbestos products*, except in bulk, when moving as contractors or construction materials and supplies which because of size or weight require the use of special equipment or special handling, (A) from Waukegan, Ill., to points in Minnesota, North Dakota, South Dakota and points in Wisconsin beginning at Highway 61 near Dubuque, Iowa on and west of U.S. Highway to LaCrosse, thence Highway 35 to its junction with Highway 53, thence Highway 53 to its junction with Highway 121 at Whitehall, thence west on Highway 121 to its junction with Highway 93, thence north on Highway 93 to Eau Claire, thence north on Highway 53 to its junction with Highway 63 near Trego, thence northeast on Highway 63 to Baldwin, thence north on Highway 27 to Lake Superior and (B) from Waukegan, Ill., to points in Wisconsin that are east of the above described area. The purpose of this filing is to eliminate the gateway of points in Iowa.

(13) *Iron and steel articles* when moving as contractors' and construction materials and supplies or as items requiring specialized handling or rigging because of size or weight, from Dover, Ohio and Pittsburgh, Pa., to points in North Dakota, and South Dakota. The purpose of this filing is to eliminate the gateway of points in Iowa. (14) (1) *Machinery* (except tractors and agricultural machinery) and (2) *machinery* (except tractors and agricultural machinery) when moving as self-propelled articles, each weighing 15,000 pounds or more and related machinery, (A) between points in North Dakota and points in Illinois on and east of the following lines: Over Highway 78 from the Illinois-Wisconsin State line near Warren, Ill., south to Jacksonville, Ill., thence Highway 67 to Alton, Iowa, and (B) between points in South Dakota and Iowa, and points in Illinois west of the above described area. The purpose of this filing is to eliminate the gateways of points in Minnesota and New London, Wisconsin. (15) *Lumber and shingles* when moving as contractors' and construction materials and supplies, (A) from points in North Dakota, to points in Illinois on, east and north of the following line: Over Highway 78 near Warren, Ill., south to its junction with Highway 36 at Jacksonville, Ill., thence east over Highway 36 to the Illinois-Indiana State line, (B) from points in Iowa and South Dakota, to points in Illinois on and north of U.S. Highway 36 and west of the above described area in Illinois. The purpose of this filing is to eliminate the gateways of New London, Wisconsin, and points in Minnesota.

(16) *Iron and steel articles* when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require special equipment or special handling, (A) from Wheeling, Beechbottom, Follansbee and Benwood, W. Va., Yorkville, Mingo, Martins Ferry and Steubenville, Ohio and Allenport, Pa., to points in Wisconsin on and west of U.S. Highway 16 beginning at LaCrosse, Wis., then east to the junction with State Highway 173 at Tomah, Wis., then east on State Highway 173 to Wisconsin Rapids, then east on State Highway 54 to the junction with U.S. Highway 51, then north on U.S. Highway 51 to the Wisconsin-Michigan State line and (B) from Wheeling, Beechbottom, Follansbee and Benwood, W. Va., Yorkville, Mingo, Martins Ferry and Steubenville, Ohio and Allenport, Pa., to points in Wisconsin that are east and south of the above described area. The purpose of this filing is to eliminate the gateway of points in Minnesota. (17) *Buildings materials*, except commodities in bulk, when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require special equipment or special handling, (A) from points in that part of Illinois on and north of U.S. Highway 6 (except points in Jo Davies County, Ill.), to points in North Dakota, South Dakota, Minnesota, and points in Iowa that are on and north of the following line: Over Highway 18 from McGregor, Iowa to Calmer, thence Highway 24 to New Hampton, thence Highway 18 to Mason City, thence south on Highway 65 to Hampton, thence Highway 3 to LeMars, thence Highway 75 to Sioux City and (B) from points in that part of Illinois that are on and north of U.S. Highway 6, to points in Iowa that are south of the above described area. The purpose of this filing is to eliminate the gateways of points in Minnesota and Hazel Green, Grant County, Wisconsin.

(18) *Wire, wire products, posts, nails and gates* when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require special equipment or special handling, from Crawfordsville, Ind., to points in Brown, Calumet, Florence, Forest, Manitowoc, Marinette, Milwaukee, Oconto, Ozaukee, Racine and Sheboygan Counties, Wis. The purpose of this filing is to eliminate the gateway of points in Wisconsin. (19) *Lumber and shingles* when moving as contractors' and construction materials and supplies, (A) from points in South Dakota that are on, west and north of the following line: Over Highway 85 from the North Dakota, South Dakota State line, south to its junction with Highway 79, then Highway 79 to its junction with Highway 14 near Sturgis, thence Highway 14 to Rapid City, thence Highway 79 to its junction with Highway 36, to its junction with A–16, thence to its junction with Highway 16, thence 16 to the South Dakota-Wyoming border to points in Illinois that are on, east and north of the following line: Over Highway 51 from near the Illinois-Wisconsin State Line at South Beloit, thence south on Highway 51 to its junction with Highway 36 near Decatur, thence east on Highway 36 to the Illinois-Indiana State line and (B) from points in Iowa and South Dakota east and south of the above described area to points in Illinois that are on and north of Highway 36 and west of the described area in Illinois. The purpose of this filing is to eliminate the gateways of New London, Wisconsin and points in Minnesota.

(20) (1) *Iron and steel articles* when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require special equipment or special handling, and (2) *materials, equipment and supplies* used in the manufacture and processing of iron and steel articles when moving as contractors and construction equipment, materials and supplies or as commodities which because of size or weight require special handling or special equipment, from the plant site of Jones and Laughlin Steel Corporation located in Putnam County, Ill., to points in North Dakota and South Dakota and return of items named in (2). The purpose of this filing is to eliminate the gateways of points in Iowa and Wisconsin. (21) (1) *machinery* (except tractors and agricultural machinery) and (2) *machinery* (except tractors and agricultural machinery) when moving as self-propelled articles each weighing 15,000 pounds or more and related machinery, (A) between points in South Dakota that are on, north and west of the following line: Over Highway 14 from the Minnesota-South Dakota border to Rapid City, S. Dak., thence Highway 79 to Hot Springs, thence Highway 71 to the South Dakota-Nebraska border, and points in Illinois that are on, east and north of the following line: Over Highway 47 from the Illinois-Wisconsin State line south to its junction with I–74 near Champaign, thence east on I–74 to the Illinois-Indiana State line and (B) between points in South Dakota south and east of the above described area and points in Illinois that are west and south of the above described line and points in Iowa. The purpose of this filing is to eliminate the gateways of points in Minnesota and New London, Wisconsin.

(22) *Plywood, veneer, wood paneling, hardboard, wallboard or wood particle board and materials, supplies and accessories* used in connection therewith when moving as contractors' and construction materials and supplies or as commodities which because of size or weight require special handling or special equipment, (A) from Duluth, Minn. and points in Wisconsin on and east of U.S. Highway 53 beginning at Superior, Wis., thence south on U.S. Highway 53 to Eau Claire, Wis., then east on U.S. Highway 12 to Madison, Wis., then east on U.S. Highway 18 to Milwaukee, Wis. and ending at Milwaukee, to points in the states of Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, Colorado, North Dakota, South Dakota and Wyoming and (B) from points in North Dakota, South Dakota, Iowa, Minnesota (except Duluth) and points in Wisconsin south and west of the above described areas to the above described states. The purpose of this filing is to eliminate the gateways of points in Minnesota and Wisconsin. (23) *Lumber, poles and piling* when moving as contractors and construction equipment, materials and supplies, (A) from points in South Dakota that are on, north and west of the following line: Over Highway 85 from the North Dakota-South Dakota line south to its junction with Highway 79, thence Highway 79 to its junction with Highway 36, thence west on Highway 36 to its junction with A–16, thence west to the junction with Highway 16, thence west to the South Dakota-Wyoming State line to points in Michigan, Ohio, Pennsylvania, New York and points in Indiana that are on, north and west of the following line: Over Highway 421 and 43 from Michigan City, Indiana south to Lafayette, Ind., thence south on Highway 231 to Loogootee, Ind., thence southeast on Highway 150 to the Indiana-Kentucky State line near Louisville, and points in Kentucky on and east of the following line: Over I–65 from Louisville, to its junction with Highway 90 near Glasgow, thence Highway 90 to Glasgow, thence Highway 31E to the Kentucky-Tennessee State line, (B) from points in South Dakota that are east and south of the above described area, to points in Illinois, and points in Indiana and Kentucky that are west of the above described area. The purpose of this filing is to eliminate the gateways of Superior, Wis. and points in Minnesota.

(24) *Cast iron pipe and fittings* when moving as contractors' and construction equipment, materials and supplies, (A) from points in Iowa, to points in Montana, Idaho, Wyoming, Utah, Arizona, Nebraska, points in Oklahoma on and west of State Highway 2 beginning at the Kansas-Oklahoma State line, then south to the junction with U.S. Highway 69, then south on Highway 69 to the junction with Indian Nation Turnpike, then south on Indian Nation Turnpike to Hugo, Okla., then south on U.S. Highway 271 to the Texas-Oklahoma State line, points in Texas on and west of Highways 271, 69 and 59, and points in Kansas on and west of U.S. Highway 169, (B) from points in Iowa, to points in Kansas, Oklahoma and Texas east of the above-described areas. The purpose of this filing is to eliminate the gateway of Council Bluffs, Iowa. (25) *Construction materials,* (A) from the facilities of Celotex Corporation at Chicago and Matteson, Ill., to points in Minnesota, North Dakota, points in South Dakota located on and north of U.S. Highway 14 beginning at the Minnesota-South Dakota State line, then west on U.S. Highway 14 to the junction with U.S. Highway 16, then west on U.S. Highway 16 to the South Dakota-Wyoming State line and (B) from the facilities of Celotex Corporation at Chicago and Matteson, Ill., to points in Iowa and points in South Dakota south of the above-described area. The purpose of this filing is to eliminate the gateways of points in Wisconsin and Minnesota.

(26) *Wood fencing, wood posts, wood rails and accessories* used in the installation of the aforementioned commodities when moving as contractors' and construction materials and supplies, (A) from points in Minnesota on and north of U.S. Highway 2 and points in Wisconsin on and east of U.S. Highway 53 beginning at Superior, Wis., thence south on Highway 53 to Eau Claire, Wis., thence south and east on U.S. Highway 12 to Madison, Wis., then east on U.S. Highway 18 to Milwaukee and ending at Milwaukee, Wis., to points in the United States east of Arkansas, Louisiana, Missouri, and Illinois and (B) from points in Iowa, North Dakota, South Dakota, points in Minnesota south of the above described area and points in Wisconsin south and west of the above described area, to points in Illinois, Missouri, Arkansas, Louisiana, Nebraska, Kansas, Oklahoma, Texas, New Mexico, Colorado, Wyoming, and Montana. The purpose of this filing is to eliminate the gateway of Amberg Township, Wis.

(27) *Lumber poles and piling* when moving as contractors' and construction equipment, materials and supplies, (A) from points in South Dakota that are on, west and north of the following line: Over Highway 85 from the North Dakota-South Dakota State line to its junction with Highway 79, thence Highway 79 to its junction with Highway A–14, thence Highway A–14 to its junction with Highway 85, thence Highway 85 to the South Dakota-Wyoming State line to points in New York, Pennsylvania, Ohio, Michigan and points in Illinois that are on and east of the following line: Over Highway 14 from the Illinois-Wisconsin State line to Woodstock, thence southeast on Highways 31 and 14 to Palatine, thence south on Highways 53, I–90 and I–294 to junction with I–80, thence I–80 to the Indiana State line, points in Indiana on, north and east of the following line: Over Highway 41

from near Dyer, Ind., south to its junction with Highway 52, thence Highway 52 to Lafayette, thence Highway 231 to the Indiana-Kentucky State line, points in Kentucky on and east of the following line: Over Highway 231 from Owensboro to near Bowling Green, thence Highway 31W to the Kentucky-Tennessee State line and (B) from points in South Dakota that are south and east of the above described area, to points in Illinois, Indiana and Kentucky that are west of the above described area. The purpose of this filing is to eliminate the gateways of Superior, Wis. and points in Minnesota. (28) *Lumber and shingles* when moving as contractors' and construction materials and supplies, (A) from points in the Upper Peninsula of Michigan and points in Wisconsin on and east of State Highway 13 beginning at Ashland, Wis., thence south on Highway 13 to Marshfield, Wis., thence east on U.S. Highway 10 to Manitowoc, Wis. and ending at Manitowoc, Wis., to points in Illinois on and north of U.S. Highway 36 and (B) from points in Wisconsin south and west of the above described area to points in Illinois on and north of U.S. Highway 36. The purpose of this filing is to eliminate the gateway of New London, Wis.

(29) *Building materials* when moving as contractors' and construction equipment, materials and supplies or as commodities which because of size or weight require special equipment or special handling, (A) between points in North Dakota, points in South Dakota that are on, north and west of Highway 44 from the Minnesota-South Dakota State line to its junction with Highway 47, thence south on Highway 47 to the South Dakota-Nebraska State line and points in Minnesota on, north and west of U.S. Highway 60 beginning at the Iowa-Minnesota State line near Worthington, Minn., then east on Highway 60 to Mankato, Minn., then east on U.S. Highway 14 to the Minnesota-Wisconsin State line, on the one hand, and, on the other, points in the Chicago, Ill. Commercial zone as defined by the Commission, (B) between points in South Dakota south and east of the above described area and points in Minnesota south of the above described area, on the one hand, and, on the other, Chicago, Ill. The purpose of this filing is to eliminate the gateways of New London, Wis. and points in Minnesota. (30) *Building materials* when moving as contractors and construction materials and supplies, (A) from points in Illinois on and north of U.S. Highway 6 (except points in Jo Daviess County) to points in Wisconsin on and west of State Highway 78 beginning at the Illinois-Wisconsin State line, thence north to junction with Highway 33, thence east and north on Highway 33 and 68 to Fond du Lac, thence north on Highway 151 to Manitowoc, Wis. and ending at Manitowoc and (B) from points in Illinois on and north of U.S. Highway 6 to points in Wisconsin south of the above described area. The purpose of this filing is to eliminate the gateway of Lafayette County, Wis.

(31) *Machinery* (except tractors and agricultural machinery), (A) between points in Iowa on and west of State Highway 60, points in South Dakota on and south of U.S. Highway 14 beginning at the Minnesota-South Dakota State line, thence west to the junction with U.S. Highway 16, thence west on U.S. Highway 16 to the South Dakota-Wyoming State line and points in the Upper Peninsula of Michigan located on and east of State Highway 95 near Iron Mountain, then north to U.S. Highway 51, then east to Marquette, Mich. ending at Marquette, Mich. and (B) between points in North Dakota and points in South Dakota north of the above described area and points in Iowa east of the above described area. The purpose of this filing is to eliminate the gateways of points in Minnesota and New London, Wis.

(32) *Lumber*, when moving as contractors and construction materials and supplies, (A) from points in the Upper Peninsula of Michigan located on and east of State Highway 35 beginning at Menominee, Mich., then north to the junction with U.S. Highway 41, then north on U.S. Highway 41 to the junction with State Highway 67, then north on Highway 67 to the junction with State Highway 94, then north on State Highway 94 to Munising, Mich. and ending at Munising, Mich., to points in Wisconsin on and south of U.S. Highway 10, points in Minnesota on and south of U.S. Highway 12 and north of U.S. Highway 60, and points in South Dakota and (B) from points in Michigan to points in Wisconsin north of the above described area, points in Minnesota south of U.S. Highway 60 and North of U.S. Highway 12 and points in Iowa and North Dakota. The purpose of this filing is to eliminate the gateways of New London, Wis. and points in Minnesota.

(33) *Wallboard, pulpboard, hardboard, insulation and insulation materials, padding cushioning*, when moving as contractors' and construction materials and supplies, (A) from points in South Dakota that are on and north of Highway 14 from the Minnesota-South Dakota State line to the South Dakota-Wyoming Border, to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, West Virginia, Virginia, North Carolina, South Carolina and Georgia and (B) from points in South Dakota that are south of the above described area, to points in Arkansas, Oklahoma and Texas. The purpose of this filing is to eliminate the gateway of Cloquet, Minn. (34) *Lumber, poles and piling* when moving as contractors and construction materials and supplies, (A) from points in Wisconsin on and north of U.S. Highway 8 beginning at the Minnesota-Wisconsin State line, then east on Highway 8 to junction with U.S. Highway 45, thence north on Highway 45 to the Wisconsin-Michigan State line, to points in Kentucky, Ohio, Pennsylvania, New York, Kansas, Nebraska and the Lower Peninsula of Michigan and (B) from points in Wisconsin south of the above described area, to points in Illinois, Indiana and Missouri. The purpose of this filing is to eliminate the gateway of Superior, Wis. (35) *Wallboard, pulpboard, hardboard, insulation, insulation materials and padding and cushioning*, when moving as contractors and construction equipment, materials and supplies, (A) from North Dakota, to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Virginia, North Carolina, South Carolina, Georgia and points in Arkansas that are on and north of the following line: Over Highway 167 from the Arkansas-Missouri State line to its junction with Highway 64, thence Highway 64 to the Arkansas-Tennessee State line and (B) from points in North Dakota, to points in Arkansas that are west and south of the above described area and points in Oklahoma and Texas. The purpose of this filing is to eliminate the gateway of Cloquet, Minn.

(36) *Cast iron pipe and fittings* when moving as contractors and construction materials and supplies, (A) from points in West Virginia, Virginia, North Carolina, Maryland, New Jersey, New York, Pennsylvania, Oklahoma, and Texas to points in Iowa on and west of Highway 71 and (B) from points in Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, to points in Iowa east of Highway 71. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota.

(37) *Cast iron pressure pipe and fittings and accessories* therefor, when moving and such pipe and when moving as contractors' and construction equipment, materials and supplies, (A) from points in Oklahoma on and west of State Highway 2 beginning at the Kansas-Oklahoma State line, then south to the junction with U.S. Highway 69, then south on U.S. Highway 69 to the junction with Indian Nation Turnpike, then south on Indian Nation Turnpike to Hugo, Okla., then south on U.S. Highway 271 to the Texas-Oklahoma State line and points in Texas on and west of Highways 271, 69 and 59 to points in Wisconsin and (B) from points in New York, Pennsylvania, Maryland, Virginia, North Carolina, West Virginia, Ohio, Kentucky, Tennessee, New Jersey, Illinois, Indiana, Michigan, Missouri, North Dakota, South Dakota and points in the above described areas in Oklahoma and Texas, to points in Wisconsin. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota.

(38) *Cast iron pressure pipe and fittings and accessories* when moving as contractors and construction equipment, materials and supplies, (A) from points in New York, Pennsylvania, Maryland, Virginia, North Carolina, West Virginia, Ohio, Kentucky, Tennessee, New Jersey, Illinois, points on and south of Highway 6, Indiana, Missouri, points in Oklahoma on and east of Highway I-35, points in Texas on and east of Highway I-35, points in Michigan, on and south of High-

way 10 from Ludington, to Bay City, then Highway 15 and 46 to Lake Huron and ending at Lake Huron to points in South Dakota and (B) from points in Illinois on and north of Highway 6, points in Michigan on and north of Highway 10 from Ludington to Bay City thence Highways 15 and 46 to Lake Huron, points in Oklahoma on and west of I–35, points in Texas west of Highway 35 and points in Wisconsin to points in South Dakota. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota.

(39) *Cast iron pressure pipe, fittings* when moving as contractors and construction materials and supplies, (A) from points in Pennsylvania, Maryland, Virginia, North Carolina, West Virginia, Kentucky, Tennessee, New Jersey, Missouri, points in Ohio on and south and east of Highway I–71 from Cleveland to Columbus, Ohio, then I–40 to the Ohio-Indiana State line, points in Indiana on and south of I–70 from the Indiana-Ohio State line to Indianapolis, then I–74 to the Indiana-Illinois State line points in Illinois on and south of Highway I–74 from the Illinois-Indiana State line to its junction with Highway 136, then over Highway 136 to the Illinois-Iowa State line, points in Oklahoma on and east of Highway I–35 and points in Texas on and east of Highway I–35 to points in North Dakota and (B) from points in Ohio north of the above described area, points in Indiana north of the above described area, points in Illinois north of the above described area, points in Oklahoma west of the above described area, points in Texas west of the above described, points in Michigan, Wisconsin and New York, to points in North Dakota. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota.

(40) *Building or roofing slabs, tile, panels and related material,* when moving as contractors and construction materials and supplies or as commodities which because of size or weight require special equipment or special handling, (A) from points in Wisconsin on and north of U.S. Highway 12 beginning at the Minnesota-Wisconsin State line, then east on U.S. Highway 12 to junction with Highway 29, thence east on Highway 29 to Wausau, Wis., thence north on Highway 51 to junction with U.S. Highway 8, thence north on U.S. Highway 8 to junction with Highway 45, thence north on U.S. Highway 45 to the Wisconsin-Michigan State line to points in Illinois on and east of Highway 45, points in Indiana, Kentucky, Tennessee, Ohio, West Virginia, Pennsylvania, New York, Maryland, Delaware, New Jersey, Connecticut, Massachusetts, New Hampshire, Vermont, Rhode Island, Maine, Kansas, Nebraska, Colorado, Montana, and Wyoming and (B) from points in Wisconsin south of the above described area, to points in the above described states and including Michigan and from points in Wisconsin north of the above described area to Michigan and points in Illinois west of Highway 45. The purpose of this filing is to eliminate the gateway of Cornell, Wis. (41) *Iron and steel pipe and valves, hydrants, fittings and accessories* when moving as contractors and construction materials and supplies or as commodities which because of size or weight require the use of special equipment or special handling, (A) from points in Iowa on and west of U.S. Highway 69 and points in South Dakota to points in the Upper Peninsula of Michigan and (B) from points in Iowa east of the above described area and points in North Dakota and Wisconsin, to points in the Upper Peninsula of Michigan. The purpose of this filing is to eliminate the gateway of Savage, Minn.

(42) *Boards and slabs,* composed of cement combined with wood fibers, when moving as contractors' and construction materials and supplies or as items requiring specialized handling or rigging because of size or weight, (A) from points in North Dakota, to points in Illinois, Indiana, Kentucky, Connecticut, Maine, Delaware, Maryland, Lower Peninsula of Michigan, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia and Washington, D.C. and (B) from points in North Dakota, to points in Colorado, Kansas, Missouri, Montana, Nebraska and Wyoming. The purpose of this filing is to eliminate the gateway of Cornell, Wis. (43) *Doors,* when moving as contractors' and construction equipment, materials and supplies, (A) from points in North Dakota, to points in Delaware, points in Kentucky on and east of U.S. Highway 41, Maryland, New Jersey, New York, Pennsylvania, Virginia and West Virginia and the Lower Peninsula of Michigan and (B) from points in North Dakota, to points in Kansas, Nebraska, Missouri and South Dakota. The purpose of this filing is to eliminate the gateways of points in Minnesota and New London, Wis.

(44) *Cast iron pressure pipe, fittings and accessories* therefor when moving as contractors' and construction materials and supplies, (A) from points in North Dakota, to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, West Virginia, Kentucky, Tennessee, Oklahoma, Mississippi, Louisiana, New Jersey, District of Columbia, Arkansas, Missouri, Ohio on and south and east of the following line: Over highway I–71 from Cleveland to Columbus, Ohio, thence I–40 to the Ohio-Indiana State line, points in Indiana on and south of the following line: Over I–70 from the Indiana-Ohio State line to Indianapolis, thence I–74 to the Indiana-Illinois State line, points in Illinois on and south of Highway I–74 from the Indiana-Illinois line to its junction with Highway 136, thence over Highway 136 to the Illinois-Iowa State line, points in Nebraska on and south and east of Highway 92 from Omaha to its junction with Highway 81, thence south on Highway 81 to the Kansas-Nebraska State line, points in Kansas on and east of Highway 81, points in Oklahoma on and east of Highway I–35 and points in Texas on and east of Highway I–35 and (B) from points in North Dakota, to points in Ohio north of the above described area, points in Indiana north of the above described area, points in Illinois north of the above described area, points in Nebraska that are west and north of the above described area, points in Kansas that are west of the above described area, points in Oklahoma west of the above described, points in Texas west of the above described area, points in Michigan, Wisconsin, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, and Arizona. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota.

(45) *Snowmobiles,* when moving as commodities which because of size or weight require special equipment or special handling, (A) from points in Wisconsin and points in Iowa on and east of U.S. Highway 69, to points in Idaho, Montana, Oregon and Washington and (B) from points in Wisconsin and Iowa east of U.S. Highway 69, to points in Arizona, Colorado, Connnecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wyoming and from points in Iowa west of Highway 69, to points in Idaho, Montana, Oregon and Washington. The purpose of this filing is to eliminate the gateway of Twin Valley, Minn. (46) *Snowmobiles* when moving as commodities which because of size or weight require special equipment or special handling, (A) from points in North Dakota, to points in Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont and (B) from points in North Dakota and South Dakota, to points in Colorado, Idaho, Arizona, Montana, New Mexico, Oregon, Washington and Wyoming. The purpose of this filing is to eliminate the gateway of Twin Valley, Minn.

(47) *Cast iron pressure pipe and fittings and accessories,* when moving as contractors' and construction equipment, materials and supplies, (A) from points in South Dakota, to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Gerogia, Florida, West Virginia, Ohio, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, New Jersey, District of Columbia, Arkansas, Illinois, points on and south of Highway 6, Indiana, Missouri, Nebraska points on and south and east of Highway 80 from Omaha to its junction with Highway 81, thence Highway 81 to the Nebraska-Kansas State line, points in Kansas on and east of Highway 81, points in Oklahoma on and east of Highway I–35, points in Texas on and east of Highway I–35, from Ludington to Bay City, thence Highway 15 and 46 to Lake Huron and (B) from points in South Dakota, to points in Montana, Idaho, Wyoming, Utah, Colorado, Arizona, New Mexico, and points west and north of the above described areas in

Illinois, Michigan, Nebraska, Kansas, Oklahoma and Texas. The purpose of this filing is to eliminate the gateways of Council Bluffs, Iowa and points in Minnesota. (48) *Cast iron pressure pipe and fittings and accessories* therefor when moving with such pipe and when moving as contractors' and construction equipment, materials and supplies, (A) from points in Wisconsin, to points in Arizona, Colorado, points in Kansas on and west of U.S. Highway 169, points in Nebraska on and south of U.S. Highway 30, New Mexico points in Oklahoma on and west of State Highway 2, beginning at the Kansas-Oklahoma State line, then south to the junction with U.S. Highway 69, then south on U.S. Highway 69 to the junction with Indian Nation Turnpike, then south on Indian Nation Turnpike to Hugo, Okla., then south on U.S. Highway 271 to the Texas-Oklahoma State line, points in Texas on and west of Highways 271, 69 and 59 and Utah and (B) from points in Wisconsin, to points in Idaho, Montana, Wyoming, Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, West Virginia, Ohio, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, New Jersey, District of Columbia, Arkansas, Illinois, Indiana, Michigan, Missouri, North Dakota, South Dakota and points east of the above described areas in Kansas, Oklahoma and Texas and points north of the above described area in Nebraska. The purpose of this filing is to eliminate the gateway of Council Bluffs, Iowa.

(49) *Prefabricated metal buildings*, knocked down, *prefabricated metal building sections*, knocked down, *prefabricated prefinished metal panel sections, component parts* thereof and *equipment, materials and supplies* used in the installation, construction or erection thereof (except metal buildings which are designed to be drawn by passenger vehicles), which because of size or weight require the use of special equipment or handling, (A) from points in Minnesota, North Dakota, South Dakota and points in Iowa on, north and west of the following lines: Over Highway 20 from Sioux City, Iowa to its junction with Highway 31 at Correctionville, thence northeast on Highway 31 to Cherokee, thence east on Highway 3 to its junction with Highway 71, thence north on Highway 71 to Spencer, thence east on Highway 18 to New Hampton, then east on Highway 24 to Calmer, thence north on Highway 150 to Decorah, thence east on Highway 9 to Waukon, thence north on Highway 76 to the Minnesota State line to points in Ohio, Pennsylvania, New York, Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont and (B) from points in Iowa that are south and east of the above described area, to points in Ohio, Pennsylvania, New York, Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island and Vermont. The purpose of this filing is to eliminate the gateways of points in Minnesota and Evansville, Wis. (50) *Lumber, poles and piling* when moving as contractors' and construction equipment, materials and supplies, (A) from points in North Dakota, to points in Michigan, Indiana, Ohio, Pennsylvania, New York and points in Illinois that are on, and east of the following line: Over Highway 78 from the Illinois-Wisconsin State line to Jacksonville, Ill., thence Highway 67 to Alton, Ill. and (B) from points in North Dakota, to points in Illinois that are west of the above described area. The purpose of this filing is to eliminate the gateways of Superior, Wis. and points in Minnesota.

This application is a gateway elimination request filed pursuant to the Commission's Policy Statement in Ex Parte No. 55 (Sub-No. 8) noticed in the FEDERAL REGISTER issue of December 9, 1974; and is directly related to MC-F-12148 published in the FEDERAL REGISTER of March 13, 1974 and published in the supplemental publication of June 13, 1974.

No. MC-F-12456. (Correction) (SKYLINE TRANSPORT, INC.—LEASE (PORTION)—O'BOYLE TANK LINES, INCORPORATED), published in the March 19, 1975, issue of the FEDERAL REGISTER on pages 12576 and 12577. Prior notice should be modified to read: *agricultural commodities*, in bulk, from Vineland, Landisville, Hammonton, Swedesboro, and Cedarville, N.J., *to* Boston, Mass., Providence, R.I., New Haven, Conn., Syracuse and New York, N.Y., Philadelphia, Scranton, and Wilkes-Barre, Pa., and Baltimore, Md.

No. MC-F-12493. Authority sought for control and merger by R.F.C. TRANSPORT, INC., P.O. Box 207, East Syracuse, N.Y. 13057, of the operating rights and property of (B) SHIPPERS SERVICE EXPRESS, INC., and (BB) E.D.C. TRANSPORT, INC., both of P.O. Box 207, East Syracuse, N.Y. 13057, and for acquisition by FRANK J. MAGARI, 605 Palmer Dr., North Syracuse, N.Y. 13212, of control of such rights and property through the transaction. Applicants' attorney: Herbert M. Canter, 315 Seitz Bldg., 201 E. Jefferson St., Syracuse, N.Y. 13202. Operating rights sought to be controlled and merged: (B) *General commodities*, except commodities in bulk, as a *common carrier*, over regular routes, between Boston, Mass., and Syracuse, N.Y., serving the off-route point of Bennington, Vt., between Boston, and Lenox, Mass., servicing the off-route point of Thompsonville, Conn., between North Adams, and Great Barrington, Mass., between Greenfield, and Springfield, Mass., serving the off-route point of Thompsonville, Conn., between Fitchburg, and Worcester, Mass., between Northampton, and Pittsfield, Mass., between Boston, and Quincy, Mass., between Boston, and Beverly, Mass., between Boston, and Haverhill, Mass., between Haverhill, and Lowell, Mass., between Boston, and Lowell, Mass., serving all intermediate points; (BB) *Frozen prepared foods*, and *fish* (including shellfish), when moving at the same time and in the same vehicle with frozen prepared foods, over irregular routes, from Gloucester and Boston, Mass., to certain specified points in New York, with restriction. Vendee is authorized to operate as a common carrier in New York, New Jersey, Rhode Island, Massachusetts, Connecticut and Pennsylvania. Application has not been filed for temporary authority under section 210a(b).

MC-F-12494. Authority sought for control and merger by B.T.L. INC., 631 Santa Fe, Kansas City, MO., 64101, of the operating rights of UTICA TRANSFER, INC., 4800 North Colorado Blvd., Denver, CO., 80216, and for acquisition by WILLIAM J. BURNS, also of Kansas, MO., 64101, of control of such rights through the transaction. Applicants' attorney: Donald L. Stern, 530 Univac Bldg., 7100 West Center Road, Omaha, NB., 68106. Operating rights sought to be controlled and merged: *General commodities*, with exceptions as a *common carrier* over regular routes between Utica, Nebr., and Omaha, Nebr., serving the intermediate points of Lincoln, Milford, Beaver Crossing, Goehner, Tamora, Grafton, Lushton, Fairmont, Friend, and Exeter, Nebr., between Utica, Nebr., and Wilber, Nebr., serving the intermediate points of Goehner, Bear Crossing, Dorchester, and Wilber, Nebr., and the off-route point of Friend, Nebr., between Utica, Nebr., and Lincoln, Nebr., serving the intermediate point of Tamora, Nebr. between Utica, Nebr., and Henderson, Nebr., serving York, Nebr., and points on U.S. Highway 34 between York and Utica as intermediate points. *General commodities* as a *common carrier* over irregular routes between Utica, Nebr., and points within 15 miles thereof, between Utica, Nebr., and points within 15 miles thereof, on the one hand, and, on the other, points in Nebraska B.T.L., Inc., is authorized to operate as a *common carrier* in Kansas, Nebraska, Missouri and Iowa. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12497. Authority sought for purchase by CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025, of the operating rights of JOE T. MILLSAPS, Trustee in Bankruptcy of BURRIS EXPRESS, INC., 1107 Johnston Bldg., Charlotte, NC 28281, and for acquisition by CONSOLIDATED FREIGHTWAYS, INC., International Bldg., 601 California St., San Francisco, CA 84108, of control of such rights through the purchase. Applicants' attorneys: Robert C. Stetson, 175 Linfield Drive, Menlo Park, CA 94025, and Eugene T. Liipfert, Suite 1100, 1660 L St. NW., Washington, DC 20036. Operating rights sought to be transferred: General commodities, with the usual exceptions, as a common carrier over regular routes, between Charlotte, and Raleigh, N.C., between Sanford, and Durham, N.C., serving various intermediate and off-route points, between Mocksville, and Harmony, N.C., between Harmony, and North Wilkesboro, N.C., between North Wilkesboro, N.C., and junction North Carolina Highway 268 and U.S. Highway 321, between junction U.S. Highway

601 and North Carolina Highway 801, and junction North Carolina Highway 801 and U.S. Highway 158, between junction U.S. Highway 64 and County Road 1605 and junction County Road 1616 and North Carolina Highway 801, between junction North Carolina Highway 901 and Iredell County Road 1862 and junction Iredell County Roads 1862 and 1896; between junction North Carolina Highway 268 and Wilkes County Road 1957 and junction Wilkes County Road 1002 and U.S. Highway 21, serving all intermediate points, between Whiteville, and Southport, N.C., between Wilmington, N.C., and junction U.S. Highway and North Carolina Highway 211 at Supply, N.C., between U.S. Highway 17 and North Carolina Highway 211 at Supply, N.C., between junction U.S. Highway 17 and North Carolina Highway 87 and junction North Carolina Highways 87 and 211 near Southport, N.C., between Wilmington, and Fort Fisher, N.C., serving all intermediate points; and under certificates of registration in Docket Nos. MC 113067 (Sub-No. 2), MC 113067 (Sub-No. 3), MC 113067 (Sub-No. 4), MC 113067) (Sub-No. 6), MC 113067 (Sub-No. 7), MC 113067 (Sub-No. 9), MC 113607 (Sub-No. 10), MC 113067 (Sub-No. 13), MC 113067 (Sub-No. 16), MC 113067 (Sub-No. 17), and MC 113067 (Sub-No. 18), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of North Carolina. Vendee is authorized to operate as a *common carrier* in California, Oregon, Washington, Illinois, Minnesota, Wisconsin, Montana, Colorado, Utah, Wyoming, Idaho, Indiana, Nevada, Ohio, Iowa, Michigan, Arizona, Kansas, Maryland, North Dakota, South Carolina, Georgia, Alabama, Kentucky, North Carolina, New York, Massachusetts, Oklahoma, Missouri, Texas, Louisiana, Pennsylvania, South Dakota, New Mexico, Nebraska, West Virginia, Mississippi, New Jersey, Connecticut, Alaska, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12498. Authority sought for purchase by CRST, INC., 3930 16th Ave. SW., P.O. Box 68, Cedar Rapids, IA 52406, of a portion of the operating rights of LEE BROS, INC., 3659 South Normal Ave., Chicago, IL 60609, and for acquisition by HERALD A. SMITH, JR., AND MIRIAM G. SMITH, both of 536 Valley Brook Drive SE., Cedar Rapids, IA, and PAUL R. SHAWVER, 2314 Blake Blvd., Cedar Rapids, IA, of control of such rights through the purchase. Applicants' attorney: Robert E. Konchar, 2720 First Ave. NE., P.O. Box 1943, Cedar Rapids, IA 52406. Operating rights sought to be transferred: *General commodities,* excepting among others, Classes A and B explosives, livestock, and household goods, as a *common carrier* over irregular routes, from points in the Chicago, Ill., Commercial Zone, as defined by the Commission, and points in Illinois within ten miles of Chicago, not including within the Commercial Zone, to points in that part of Indiana on and north of U.S. Highway 20, between points in the Chicago, Ill., Commercial Zone, as defined by the Commission, and points in Illinois within ten miles of Chicago, not included within the Commercial Zone, on the one hand, and, on the other, Cincinnati, Dayton, and Hamilton, Ohio, and points in that part of Ohio on and north of a line extending along U.S. Highway from the Ohio-Indiana State line to certain specified points in Ohio, Michigan and Pennsylvania; *soda ash, caustic soda,* and *other cleaning compounds,* from Detroit and Wyandotte, Mich., to South Bend, Elkhart, and La Porte, Ind.; *meats, 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 liquid commodities in bulk, in tank vehicles, between the plant site of Swift & Co., at Rochelle, Ill., on the one hand, and, on the other, Cincinnati, Dayton, and Hamilton, Ohio, and points in that part of Ohio on and north of a line beginning at the Ohio-Indiana State line and extending along U.S. Highway 20 to certain specified points in Ohio, Michigan and Pennsylvania, from the plant site of Swift & Co., at Rochelle, Ill., to points in that part of Indiana on and north of U.S. Highway 20, with restrictions. Vendee is authorized to operate as a common carrier in all of the States in the United States, and including the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12499. A & R TRANSPORT, INC., 1762 Chip Road, Kawkawlin, MI 48631, of the operating rights of BEN RUEGSEGGER TRUCKING SERVICE, INC., Route #1, Kawkawlin, MI 48631, and for acquisition by ALAN RUEGSEGGER, 103 N. Erie, Bay City, MI 48706, of control of such rights through the purchase. Applicants' representative: Benjamin H. Ruegsegger, Route #1, Kawkawlin, MI 48631. Operating rights sought to be transferred: *Malt beverages,* as a *common carrier* over irregular routes, from Milwaukee, Wis., and Bensenville, Ill., to points in the Lower Peninsula of Michigan (except Saginaw and Bay Counties). Vendee is authorized to operate as a *common carrier* in Illinois, Indiana, Michigan, Ohio, and Wisconsin. Application has been filed for temporary authority under section 210a (b).

MOTOR CARRIER PASSENGER

No. MC–F–12500. Authority sought for purchase by CARAVAN TOURS, INC., doing business as CARAVAN TOWNE CARS, Route 3 Box 451, Wharton, NJ 07885, of the operating rights of MORRIS WOLDORF, doing business as WOLDORF TRANSPORTATION SERVICE, 5456 Euclid Ave., Philadelphia, PA 19131, and for acquisition by ROBERT W. LOVITO, 139 Hurd St., Mine Hill, Dover, NJ 07885, of control of such rights through the purchase. Applicant's attorney: L. C. Major, Jr., Suite 400, Overlook Office Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Operating rights sought to be transferred: Passengers and their baggage in the same vehicle with passengers, in special operations, in nonscheduled service, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats, as a common carrier over irregular routes, between King of Prussia, Fort Washington and Willow Grove, Pa., on the one hand, and, on the other, New York, N.Y., with restriction. Vendee is authorized to operate as a common carrier in New Jersey, New York and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12502. Authority sought for purchase by a non-carrier, CHENANGO VALLEY BUS LINES, INC., 17 Franklin Turnpike, Mahwah, NJ 07430, of the operating rights and properties of (B) BINGHAMTON SHORT LINES CORP., and (BB) AUSTIN F. ROBBINS, doing business as CHENANGO VALLEY TRANSIT, both of 123 Eldredge St., Binghamton, NY 13901, and for acquisition by LIMOUSINE RENTAL SERVICE, INC., 17 Franklin Turnpike, Mahwah, NJ 07430, of control of such rights and property through the purchase. Applicants' attorneys: Samuel B. Zinder, 98 Cutter Mill Road, Great Neck, NY 11021, and Donald C. Carmien, 59–61 Court St., Binghamton, NY 13901. Operating rights sought to be transferred: (B) Passengers and their baggage, and express and newspapers in the same vehicle with passengers, as a common carrier over regular routes, between Carbondale, Pa., and Binghamton, N.Y., serving the intermediate points between Carbondale, Pa., and Lenox, Pa., including Lenox, on U.S. Highway 106, between Binghamton, N.Y., and Lanesboro, Pa., between Lanesboro, and Carbondale, Pa., serving all intermediate points; passengers and their baggage, and express and newspapers in the same vehicle with passengers, in seasonal operations from July 1 through August 31 of each year, between Honesdale, Pa., and Hancock, N.Y., between Rileyville, Pa., and Hancock, N.Y., between Lakewood and East Ararat, Pa., serving all intermediate points; passengers and their baggage, restricted to traffic originating at the points and in the territory indicated, in charter operations, over irregular routes, from Binghamton, Johnson City, and Endicott, N.Y., to points in New York, New Jersey, Ohio, Massachusetts, Pennsylvania, and the District of Columbia, and return; (BB) Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers, as a common carrier over regular routes, between Binghamton, and Utica, N.Y., between Utica, N.Y., and junction New York Highway 12–B and New York Highway 12 (north of Sherburne, N.Y.), between Binghamton, and Oneonta, N.Y., between the Village of Sidney, N.Y., and junction New York

Highways 7 and 8 in the Town of Sidney, N.Y., serving all intermediate points; passengers and their baggage, in the same vehicle with passengers, in special and charter operations, in round trip tours, over irregular routes, beginning and ending at points in Chenango County, N.Y., and extending to points in the United States (except Hawaii and Alaska). Vendee holds no authority from this Commission. However, it is affiliated with LIMOUSINE RENTAL SERVICE, INC., 17 Franklin Turnpike, Mahwah, NJ 07430, which is authorized to operate as a common carrier in New York, New Jersey, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12504. Authority sought for purchase by K & W TRUCKING CO., INC., P.O. Box 1415, St. Cloud, MN 56301, of the operating rights and property of O. G. NESS, doing business as O. G. NESS TRUCK CO., 306 Klutina St., Valdez, AK 88686, and for acquisition by HAROLD E. ANDERSON, 203 Cooper Avenue North, St. Cloud, MN 56301, of control of such rights through the purchase. Applicants' attorney: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. Operating rights sought to be transferred: *General commodities,* as a *common carrier* over irregular routes, between points in Valdez, Alaska, between Valdez, Alaska, on the one hand, and, on the other, those points in Alaska (1) on Alaska Highway 2 (The Alaska Highway) between and including Fairbanks, Alaska and the United States-Canada Boundary line; (2) on Alaska Highway 1 (The Glenn Highway) between and including Tok Junction and Anchorage, Alaska; (3) on Alaska Highway 4 (The Richardson Highway) between Valdez and the junction of Alaska Highways 2 and 4 at or near Buffalo Center, Alaska; and (4) on Alaska Highway 5 (The Taylor Highway) between and including Tetlin Junction and Eagle, Alaska. Vendee is authorized to operate as a *common carrier* in Alaska, Illinois, Iowa, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Application has been filed for temporary authority under section 210a(b).

No. MC-F-12505. Authority sought for purchase by CROUCH FREIGHT SYSTEMS, INC., P.O. Box 1059, St. Joseph, MO 64502, of the operating rights and property of BOLACK'S EXPRESS, INC., 2 Neponset St., Worcester, MA 01606, and for acquisition by U T S FREIGHT SYSTEMS; O. N. C. FREIGHT SYSTEMS, both of 2800 W. Bayshore Rd., Palo Alto, CA 94303; and ROCOR INTERNATIONAL (a non-carrier holding company) and in turn by DAVID P. ROUSH, and DIANE G. ROUSH, as custodian for their minor children, all of 260 Sheridan Ave., Palo Alto, CA 94306, of control of such rights and property through the purchase. Applicants' attorney: Roland Rice, 1111 E St. NW., Suite 618, Washington, DC 20004. Operating rights sought to be transferred: *General commodities,* excepting among others, Class A and B explosives, livestock, household goods and commodities in bulk, as a *common carrier* over regular routes, between Holyoke and Fitchburg, Mass., and Providence, R.I., serving all intermediate points, and various off-route points; *paper,* and *paper products,* over irregular routes, from Fitchburg and Leominster, Mass., to points in Connecticut. Vendee is authorized to operate as a *common carrier* in Arizona, Arkansas, California, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11346 Filed 4-29-75;8:45 am]

FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

APRIL 25, 1975.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

California Docket No. 55602, filed April 3, 1975. Applicant: AIRWAY TRUCKING CO., 1605 Chapin Road, Montebello, Calif. 90022. Applicant's representative: Murchison & Davis, 9454 Wilshire Blvd., Suite 400, Beverly Hills, Calif. 90212. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *property* necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipelines, refineries, and cracking or casinghead plants; *equipment and materials* used in or for construction or farming, or maintenance thereof, between all points and places on and along the following described routes, including all intermediate points, with the right to make lateral departures therefrom within a radius of 50 miles of such routes: U.S. 101, U.S. 101 By-Pass, or California Highway 1 between Oregon-California State Line and Los Angeles; Interstate Highway 5 and/or California Highway 99, Interstate Highway 10 and California Highway 111, between Oregon-California State Line and the Mexican Border; California Highway 299 between Redding and Alturas, California; U.S. 395 between the Oregon-California State Line and the California-Nevada State Line, via Alturas and Johnstonville; California Highway 36 between Junction Interstate Highway 5 near Red Bluff, California, and Junction U.S. Highway 395 at Johnstonville; California Highway 20 between Marysville, California, and Junction Interstate Highway 80; Interstate Highway 80 between San Francisco and California-Nevada State Line; U.S. 50 between Sacramento, Calif., and California-Nevada State Line; U.S. 395 between California-Nevada State Line at Topaz Lake and Junction Interstate Highway 15; Interstate Highway 15 between Junction with U.S. Highway 395 and San Diego; U.S. 66 and/or Interstate Highways 15 and 40 between Los Angeles and Needles, Calif.; Interstate Highway 10 between Los Angeles, Calif., and California-Arizona State Line; Interstate Highway 15 between Barstow and Nevada-California State Line; Interstate Highway 8 between San Diego and California-Arizona State Line; California Highway 127 between Baker and Nevada-California State Line, and for the transportation of general commodities as follows:

Between all points and places within the Los Angeles Basin Territory described in Note A, The San Francisco Territory as described in Note B, and the San Diego Territory described in Note C and between said territories, serving all points and places on and within ten (10) miles laterally of Interstate Highway 5, between Stockton and San Diego, U.S. Highway 101, or California Highway 1, between Los Angeles and San Francisco, California Highway 99, between Stockton and Wheeler Ridge, and California Highway 4 between its junction with Interstate Highway 80 near Pinole and Stockton. Except that pursuant to the authority granted herein, carrier shall not transport any shipments of: (1) Used household goods, personal effects and office, store and institution furniture fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B. (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses, and bus chassis. (3) Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine, or wethers. (4) Liquids, compressed gases, commodities in semi-plastic form and commodities in

suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or combination of such highway vehicles. (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Logs.

(8) Trailers coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper. Note A: Los Angeles Basin Territory (Revised) includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Los Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; southwesterly along Mill Creek Road to the county road known as Bryant Street 3.8 miles north of Yucaipa; southerly along Bryant Street to the San Bernardino-Riverside County line; west, north and west along the San Bernardino-Riverside County line to Iowa Street; southerly along Iowa Street to U.S. Highway 395; southeasterly along U.S. Highway 395 to Nuevo Road, approximately 1 mile north of Perris; easterly along Nuevo Road through Nuevo and northeasterly and northerly through Lakeview; easterly along Ramona Expressway and Boulevard to the City of San Jacinto; southerly along San Jacinto Street to State Highway No. 74.

Westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of the Atchison, Topeka & Santa Fe Railway Company, southwesterly along said right of way to Washington Avenue; southerly along Washington Avenue through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the County road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary lines; westerly along said boundary line to the Orange County-San Diego County boundary lines; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning. Note B: San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way, southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue.

Easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along on imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

NOTE C.—San Diego Territory includes that area embraced by the following imaginary line starting at the northerly junction of U.S. Highways 101–E and 101–W (four miles north of La Jolla); thence easterly to Miramar on State Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U.S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line; west to the Pacific Ocean and north along the coast to point of beginning. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time, and place not yet fixed. Requests for procedural information should be addressed to the Public Utilities Commission, State of California, 350 McAllister Street, State Bldg., Civic Center, San Francisco, Calif. 94102, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T-6846, filed April 7, 1975. Applicant: BOSSONG'S COMMERCIAL DELIVERY, INC., 6717 Pickard Drive, Syracuse (Mattydale), N.Y. 13211. Applicant's representative: Herbert M. Canter, 315 Seitz Building, 201 E. Jefferson Street, Syracuse, N.Y. 13202. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *General commodities as defined in Section 800.1 of Title 17 of the official Compilation of Codes, Rules and Regulations of the State of New York:* Between the City of Syracuse on the one hand, and, on the other, all points in the following counties: Cayuga, Cortland, Madison, Oneida, Onondaga, Oswego, and Tompkins. *Subject,* however, to the following restrictions and conditions: (1) No service shall be rendered in the transportation of any package or article weighing more than ONE HUNDRED (100) POUNDS. (2) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than FIVE HUNDRED (500) POUNDS from one consignor at one location to one consignee at one location on any one day. (3) Service shall be limited to shipments that will be picked up and delivered within a FORTY-EIGHT (48) HOUR period.

NOTE.—Applicant presently holds authority to transport general commodities in *department store and specialty shop deliveries,* from the City of Syracuse to all points in the above enumerated counties, with returned or traded-in merchandise in the reverse direction. By this application applicant seeks to remove the present commodity restriction in its authority and impose new ones. Applicant also seeks reverse direction authority in addition to that already held pursuant to Case T-1120 Application of John A. Jungermann & Son, Inc., adopted October 26, 1953. Intrastate, Interstate and foreign commerce authority sought.

HEARING: Date, time and place not yet fixed. Requests for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, N.Y. 12226 and should *not* be directed to the Interstate Commerce Commission.

Texas Docket (unnumbered) (Correction) filed March 20, 1975, published in the FEDERAL REGISTER issue of April 9, 1975, and republished as corrected this

issue. Applicant: FILM TRANSFER COMPANY, INC., Suite 202, Regal Plaza, 1499 Regal Row, Dallas, Tex. 75247. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Bldg., Austin, Tex. 78701. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of (1) General commodities, subject to the following restriction: No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day; and (2) Motion picture films and theater supplies, newspapers, magazines and periodicals, bread and baker's cake, between Corsicana, Texas and Athens, Texas over State Highway 31 serving all intermediate points, coordinating the service proposed herein with that now being rendered under existing authority and interlining with other carriers at appropriate interline points. Applicant also seeks authority to operate over the following alternate routes without service to any intermediate points thereon except as otherwise authorized. (1) U.S. Highway 69 between Alto and Lufkin, Texas. (2) State Highway 21 between Madisonville and Alto, Texas. (3) State Highway 7 between Centerville and Nacogdoches, Texas. (4) State Highway 103 between Lufkin, Texas and the intersection of State Highway 103 with State Highway 7. (5) State Highway 94 between Groveton and Lufkin, Texas. (6) State Highway 294 and U.S. Highway 84 between Fairfield and Alto, Texas. (7) U.S. Highway 79 between Buffalo and Jacksonville, Texas. (8) F. M. Roads 90 and 59 between Cayuga and Malakoff, Texas. (9) State Highway 34 between its intersection with I. H. 45 and its intersection with U.S. Highway 175. (10) I. H. 45 between Dallas and Galveston, Texas. (11) State Highway 19 between Palestine and Athens, Texas.

NOTE.—The purpose of this correction is to (1) indicate correct alternate route authority in No. (3); (2) include No. (4); and correct No. (5). Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not yet fixed, but approximately 30 days subsequent to date published in the FEDERAL REGISTER. Requests for procedural information should be addressed to the Railroad Commission of Texas, Capitol Station—P.O. Drawer 12967, Austin, Tex. 78711 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11351 Filed 4-29-75;8:45 am]

[Notice No. 9]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

APRIL 25, 1975.

The following letter-notices of proposals (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), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c) (9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c) (9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 695), GREYHOUND LINES, INC. (Western Division) 371 Market Street, San Francisco, Calif. 94106, filed April 8, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From South Albany Junction, Oreg., over Oregon Highway 34 to Corvallis, Oreg., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From South Albany Junction, Oreg., over Interstate Highway 5 to Albany, Oreg., thence over U.S. Highway 20 to Corvallis, Oreg., and return over the same route.

No. MC 61599 (Deviation No. 10) (Cancels Deviation Nos. 3, 5 and 7), CONTINENTAL SOUTHEASTERN LINES, INC., P.O. Box 2387, Charlotte, N.C. 28234, filed April 17, 1975. Carrier's representative: Lawrence E. Lindeman, Suite 1032, Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, D.C. 20004. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Fayetteville, N.C., over Interstate Highway 95 to junction Interstate Highway 95 and U.S. Highway 17 south of Hardeeville, S.C., with the following access routes: (1) From junction Interstate Highway 95 and U.S. Highway 13 over U.S. Highway 13 to Lumberton, N.C., (2) From junction Interstate Highway 95 and North Carolina Highway 211 over North Carolina Highway 211 to Lumberton, N.C., (3) From junction Interstate Highway 95 and South Carolina Highway 9, over South Carolina Highway 9 to Dillon, S.C., (4) From junction Interstate Highway 95 and South Carolina Highway 34 over South Carolina Highway 34 to Dillon, S.C., (5) From junction Interstate Highway 95 and U.S. Highway 52 over U.S. Highway 52 to Florence, S.C., (6) From junction Interstate Highway 95 and Interstate Highway 20, over Interstate Highway 20 to Florence, S.C., (7) From junction Interstate Highway 95 and South Carolina Highway 261, over South Carolina Highway 261 to Manning, S.C., (8) From junction Interstate Highway 95 and South Carolina Highway 6 over South Carolina Highway 6 to Santee, S.C., (9) From junction Interstate Highway 95 and U.S. Highway 278 over U.S. Highway 278 to Ridgeland, S.C., and (10) from junction Interstate Highway 95 and U.S. Highway 17 over U.S. Highway 17 to Ridgeland, S.C., and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Fayetteville, N.C., over U.S. Highway 301 to Pee Dee Junction, S.C., thence over U.S. Highway 76 to Florence, S.C., thence over U.S. Highway 301 to junction South Carolina Highway 6, thence over South Carolina Highway 6 to Elloree, S.C., thence over South Carolina Highway 47 to junction South Carolina Highway 4, thence over South Carolina Highway 4 to Orangeburg, S.C., thence over U.S. Highway 601 to Hampton, S.C., thence over U.S. Highway 278 to junction South Carolina Highway 170, thence over South Carolina Highway 170 to junction U.S. Highway 17, and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11345 Filed 4-29-75;8:45 am]

[Notice No. 15]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

APRIL 25, 1975.

The following letter-notices of proposals (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), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(c) (11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c) (12)) at any time, but will not operate to stay commencement of the proposed operations unless filed on or before May 30, 1975.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 33641 (Deviation No. 85), IML FREIGHT, INC., 2175 So. 3270 West, P.O. Box 2277, Salt Lake City, Utah 84110, filed April 14, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Fernley, Nev., over Interstate Highway 80 (using segments of U.S. Highway 40 where Interstate Highway 80 is incomplete) to Battle Mountain, Nev., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Fernley, Nev., over U.S. Highway 95 to Fallon, Nev., thence over U.S. Highway 50 to Austin, Nev., thence over Nevada Highway 8A to Battle Mountain, Nev., and return over the same route.

No. MC 33641 (Deviation No. 86), IML FREIGHT, INC., 2175 So. 3270 West, P.O. Box 2277, Salt Lake City, Utah 84110, filed April 14, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Elko, Nev., over U.S. Highway 40 (Using segments of Interstate Highway 80 where completed) to Battle Mountain, Nev., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Elko, Nev., over U.S. Highway 40 (using segments of Interstate Highway 80 where completed) to Wells, Nev., thence over U.S. Highway 93 to Ely, Nev., thence over U.S. Highway 50 to Austin, Nev., thence over Nevada Highway 8A to Battle Mountain, Nev., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11344 Filed 4-29-75;8:45 am]

[Notice No. 278]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

APRIL 30, 1975.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before May 20, 1975 pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-75641. By order of April 11, 1975, the Motor Carrier Board approved the transfer to C. W. Mitchell, Inc., Tampa, Fla., of the operating rights in Certificate No. MC-118138 (Sub-No. 5) issued May 6, 1964, to Benefield Brothers, Incorporated, Hanceville, Ala., authorizing the transportation of bananas, from Tampa and Jacksonville, Fla., to points in Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia. Rudy Yessin, P.O. Box B, Frankfort, Ky. 40601 Attorney for applicants.

No. MC-FC-75697. By order entered April 7, 1975 the Motor Carrier Board approved the transfer to Falls Cities Transfer, Inc., Jeffersonville, Ind., of the operating rights set forth in Certificate No. MC 931, issued March 18, 1975, to Falls Cities Transfer and Storage Company, Incorporated, Jeffersonville, Ind., authorizing the transportation of Classes A and B explosives, between Louisville, Ky., and points in Kentucky within 10 miles of Louisville, on the one hand, and, on the other, points in Clark and Floyd Counties, Ind., not including Sellersburg, Speed, Memphis, Henryville, and Borden, Ind. J. G. Dail, Jr., 1111 E St., NW., Washington, D.C. 20004, attorney for applicants.

No. MC-FC-75718. By order entered April 30, 1975 the Motor Carrier Board approved the transfer to Stump The Mover, Inc., Chicago, Ill., of the operating rights set forth in Certificate No. MC 51408, issued September 10, 1964, to World Transit Van Lines, Inc., Chicago, Ill., authorizing the transportation of household goods as defined by the Commission, between Chicago, Ill. and points in Illinois within 25 miles of Chicago, on the one hand, and, on the other, points in Illinois, Indiana, Michigan, Missouri, Ohio, and Wisconsin. James R. Madler, 1255 Sandburg Terrace, Chicago, Ill. 60610, attorney for applicants.

No. MC-FC-75729. By order of April 10, 1975, the Motor Carrier Board approved the transfer to Robert J. Dillon, Wood Ridge, N.J., of that portion of the operating rights in Certificate No. MC 59075 issued March 11, 1971, to Braunstein Express Co., Inc., New York, N.Y., authorizing the transportation of new furniture, between New York, N.Y., on the one hand, and, on the other, points in Westchester, Rockland, Putnam, Orange, Nassau, and Suffolk Counties, N.Y., and those in Morris, Passaic, Somerset, Union, Mercer, Bergen, Essex, Hudson, Middlesex, and Monmouth Counties, N.J. Robert B. Pepper, Registered Practitioner, 168 Woodbridge Avenue, Highland Park, N.J. 08904.

No. MC-FC-75750. By order entered March 31, 1975 the Motor Carrier Board approved the transfer to Zerkle Trucking Company, a corporation, Middleport, Ohio, of the operating rights set forth in Permit No. MC 128905 (Sub-No. 1), issued January 9, 1968, to Gary E. Chapman, doing business as Chapman Trucking Co., Huntington, W. Va., authorizing the transportation of materials and supplies used in the manufacture of carpets and carpeting, from Huntington, W. Va., to the plant site of Louisa Carpet Mills, Inc., at or near Louisa, Ky., restricted to traffic having a prior movement by rail, and further restricted to a transportation service to be performed under a continuing contract, or contracts with Louisa Carpet Mills, Inc. DUAL OPERATIONS AUTHORIZED. John M. Friedman, 2930 Putman Ave., Hurrican, West Virginia 25526, practitioner for applicants.

No. MC-FC-75766. By order of April 7, 1975 the Motor Carrier Board approved the transfer to Vaught Truck Line, Inc., Hiawatha, Kan., of the operating rights in Certificates No. MC-86099 (Sub-No. 3) and MC-86099 (Sub-No. 4) issued December 4, 1969 to Carl Vaught, Hiawatha, Kan., authorizing the transportation of general commodities, with exceptions, between points in a described area of Kansas, and between St. Joseph, Mo. and Elwood, Kan. Clyde N. Christey, 641 Harrison St., Topeka, Kan., 66603 Attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11349 Filed 4-29-75;8:45 am]

[Notice No. 48]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 25, 1975.

The following are notices of filing of application, 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, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that

such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies. 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 field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2900 (Sub-No. 275TA), filed April 18, 1975. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, Fla. 32203. Applicant's representative: S. E. Somers, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General combmodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the plantsite and warehouse facilities of Freeman Shoe Co., Beloit, Wis., as an off-route point in connection with applicant's presently authorized regular routes.

NOTE.—Applicant intends to join the authority sought herein with its existing authority in MC-2900 and subs at South Beloit, Ill., for 180 days.

Supporting shipper: Freeman Shoe Co., 113 Mill St., Beloit, Wis. 53511. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 104683 (Sub-No. 37TA), filed April 15, 1975. Applicant: TRANSPORT, INC., P.O. Box 1524, Hattiesburg, Miss. 39401. Applicant's representative: T. D. Hitt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sulphur*, in bulk, in tank vehicles, from Washington County, Chatom Field, Ala., to points in Pascagoula, Miss.; Pelham and Bainbridge, Ga., for 180 days. Supporting shipper: Martin Gas Sales, P.O. Drawer 191, Kilgore, Tex. 75662. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 114284 (Sub-No. 68TA), filed April 18, 1975. Applicant: FOX-SMYTHE TRANSPORTATION CO., 1700 S. Portland Avenue, P.O. Box 82307, Oklahoma City, Okla. 73108. Applicant's representative: M. W. Thompson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses* and such commodities as are used by meat packers in the conduct of their business, when destined to and for use by meat packers, as described in Section A, B, C, and D of Appendix I to report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and storage facilities of Glover Packing Company, at or near Roswell, N. Mex., to points in Arizona, Arkansas, California, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, Nevada, Oklahoma and Texas, for 180 days. Supporting shipper: Glover Packing Company, Lloyd Burch, T. M., Roswell, N. Mex. Send protest to: Marie Spillars, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 240, Old P.O. Bldg., 215 N.W. Third, Oklahoma City, Okla. 73102.

No. MC 119789 (Sub-No. 243TA) (Correction), filed March 28, 1975, published in the FEDERAL REGISTER issue of April 11, 1975, and republished as corrected this issue. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, commodities in bulk, used automobiles and commodities which because of size or weight require the use of special equipment), from New York, N.Y., to points in Oklahoma City, Okla., and Dallas and Houston, Tex., restricted to (1) traffic originating at the named origin and destined to the named destinations, and (2) restricted to traffic moving on bills of lading issued by Freight Forwarders regulated under Section IV of the Interstate Commerce Act, for 180 days. Supporting shipper: Inter State Express, Inc., 56-25 56th Terrace, Maspeth, Long Island, N.Y. 11378. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202. The purpose of this republication is to correct the commodity description.

No. MC 128256 (Sub-No. 26TA), filed April 17, 1975. Applicant: O. W. BLOSSER, doing business as BLOSSER TRUCKING, 215 N. Maine Street, Middlebury, Ind. 46540. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Siding, roofing, and related component parts and accessories* (except in bulk), from Alumax Building Products, Bristol, Ind., to points in New York State, Yonkers, N.Y., Franklin Square, N.Y., New York, N.Y., Buffalo, N.Y., Long Island, N.Y. Elmira, N.Y., Syracuse, N.Y., Albany, N.Y., Poughkeepsie, N.Y., Binghamton, N.Y., Dallas, Tex., Baltimore, Md., Hagerstown, Md., Greensboro, N.C., Charlotte, N.C., Tallahassee, Fla., Tampa, Fla., Birmingham, Ala., New Orleans, La., for 180 days. Supporting shipper: Alumax Building Products, Bristol, Ind. 46507. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 345 W. Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 129862 (Sub-No. 10TA), filed April 23, 1975. Applicant: RAJOR, INC., P.O. Box 756, Franklin, Tenn. 37064. Applicant's representative: William J. Monheim, P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Athletic, gymnastic, aquatic, and sporting goods, including parts and accessories therefor; adhesives; rubber tire treads; hardware; advertising material;* and *materials, equipment and supplies* utilized in the manufacture, sale and distribution of the described commodities, from Garden Grove, Calif., to points in Arlington, Tex.; Atlanta, Ga.; Birmingham, Ala.; Bridgeton, Mo.; Decatur, Ga.; Edison, N.J.; Elk Grove Village, Ill.; Griffin, Ga.; Houston, Tex. Maywood, N.J.; Mobile, Ala.; Nashville, Tenn.; New Orleans, La.; River Grove, Ill.; Shelby, Ohio; Tampa, Fla.; and to points in the respective commercial zones of the named cities. Restriction: The authority to be authorized is to be restricted against the transportation of commodities in bulk and those which by reason of size or weight require the use of special equipment and is to be further restricted to a transportation service to be performed under a continuing contract, or contracts with AMF, Incorporated and its affiliates, for 180 days. Supporting shipper: AMF, Incorporated, 3801 South Harbor Blvd., Santa Ana, Calif. 92704. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, A-422 Federal Building, 801 Broadway, Nashville, Tenn. 37203.

No. MC 134323 (Sub-No. 72TA), filed April 18, 1975. Applicant: JAY LINES, INC., 720 North Grand, Amarillo, Tex. 79105. Applicant's representative: Gailyn Larsen, 621 South 14th Street, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail department stores, and equipment, materials and supplies used in the conduct of business* (except commodities in bulk), from the facilities of J. C. Penney Company, Inc., at or near Ridgefield, N.J., to points in Houston, Tex., Dallas, Tex., Kansas City, Mo., St. Louis, Mo., Denver, Colo., and Memphis, Tenn., for 180 days. Supporting shipper: J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, N.Y. 10019. Send protests to: Haskell E. Ballard, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box H-4395, Herring Plaza, Amarillo, Tex. 79101.

No. MC 139261 (Sub-No. 2TA), filed April 16, 1975. Applicant: BUCKEYE EXPRESS, INC., Willis Day Industrial Park, Perrysburg, Ohio 43551. Applicant's representative: James Robert Evans, 145 West Wisconsin Avenue, Neenah, Wis. 54956. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such mer-*

chandise as is dealt in by wholesale, retail, chain grocery and food business houses, from points in Auburndale, Mount Plymouth, Orlando and Yulee, Fla.; Chicago, Illinois Commercial Zone, as defined by the Interstate Commerce Commission in MC C-3, Champaign and Kankakee, Ill.; Fort Wayne, Hobbs, Indianapolis and Plymouth, Ind.; New Orleans, La.; Waterville, Maine, Chelsea, Coloma, Detroit, Lawton and Paw Paw, Mich.; Marshall, Mo.; Seneca and Williamson, N.Y.; Hershey, Milton and Pittsburgh, Pa., to points in Maumee, Ohio, under continuing contract to Seaway Food Town, Inc., 1020 Ford Road, Maumee, Ohio, for 180 days. Supporting shipper: Seaway Food Town, Inc., 1020 Ford Road, Maumee, Ohio 43537. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 140686 (Sub-No. 1TA) (Correction), filed April 9, 1975, published in the FEDERAL REGISTER issue of April 18, 1975, and republished as corrected this issue. Applicant: V S M TRUCKING, INC., 901 N. Monroe Street, Abingdon, Ill. 61410. Applicant's representative: Samuel G. Harrod, Eureka Professional Bldg., 107 East Eureka Avenue, Eureka, Ill. 61530. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plumbers' goods, bathroom and lavatory fixtures, and supplies therefor*, from the plantsite of Briggs at Abingdon, Ill., to points in the states of Alabama, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas and Virginia, for 180 days. Supporting shipper: Briggs, Division of U.S. Pipe, 801 N. Maine Street, Abingdon, Ill. 61410. Send protests to: Richard K. Shullaw, District Supervisor, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, Ill. 60604. The purpose of this republication is to correct the territorial description and include the supporting shipper, which was previously omitted from the FEDERAL REGISTER.

No. MC 140780 (Sub-No. 1TA), filed April 18, 1975. Applicant: ALVIN V. GREEN, Route 1, Lynchburg, S.C. 29080. Applicant's representative: John H. Lumpkin, Jr., 12th Floor SCN Center, Corner Lady and Main Street, Columbia, S.C. 29201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer materials*, in bags, between the plantsite of Kaiser Agricultural & Chemical Company, near Riegelwood, N.C. (Acem) and points in Clarendon, Lee, Florence, Sumter, Williamsburg, Darlington, Kershawe and Georgetown Counties, S.C., for 180 days. Supporting shipper: Kaiser Agricultural Chemicals, P.O. Box 246, Savannah, Ga. 31402. Send protests to: E. E. Strotheid, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 302, 1400 Bldg., 1400 Pickens St., Columbia, S.C. 29201.

No. MC 140828TA, filed April 17, 1975. Applicant: ACE MOVING & STORAGE, INC., 600 E. Broad, P.O. Box 2546, Texarkana, Ark. 75501. Applicant's representative: Joseph J. Reardon, Sr., 205 Brentwood Drive, Hot Springs, Ark. 71901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods and personal effects*, said operations are restricted to transportation of traffic having a prior or subsequent movement in containers beyond the points authorized, further said operations are restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating or de-containerization of such traffic, between Texarkana, Ark., and Counties of Clark, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, Pike and Sevier in the state of Arkansas, Bowie, Camp, Cass, Franklin, Morris, Red River and Titus in the state of Texas; and McCurtain County, Okla., for 180 days. Supporting shipper: Department of Defense, Regulatory Law Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C. 20310. Send protests to: Opal Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 140836 (Sub-No. 1TA), filed April 18, 1975. Applicant: MOUNTAIN ENTERPRISES, INC., P.O. Box 332, Hastings, Minn. 55033. Applicant's representative: F. H. Kroeger, 1745 University Avenue, St. Paul, Minn. 55104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Breakfast cereal and cereal aggregates*, from Lakeville, Minn., to all points in the United States (except Alaska and Hawaii); *Materials and supplies used in the manufacture and distribution of breakfast cereals and commodities*, the transportation of which is partially exempt under Section 203(b)(6) of the Interstate Commerce Act when moving with the above named commodities (except commodities in tank vehicles), from points in the United States (except Alaska and Hawaii), to Lakeville, Minn., for 180 days. Supporting shipper: The Grist Mill Co., 21325 Hamburg Avenue, Lakeville, Minn. 55044. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 414 Federal Bldg., & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 140856TA, filed April 17, 1975. Applicant: ERNEST W. HAMADY, doing business as, ATLAS WAREHOUSING COMPANY, 510 West Kearsley St., P.O. Box 3551, Flint, Mich. 48506. Applicant's representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, Mich. 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as it dealt with by retail stores of S.S. Kresge Company* (1) from Saginaw and Flint, Mich., to S.S. Kresge Company Stores in Owosso, Corunna, Midland, and Mt. Pleasant, Mich., and their respective commercial zones with the right of return of rejected or damaged merchandise; and (2) from Flint, Mich., to S.S. Kresge Company Stores in Saginaw, Mich., and its commercial zone with the right of return or rejected or damaged merchandise, for 180 days. Supporting shipper: S.S. Kresge Company, General Traffic Manager, C. F. Rowe, 3100 W. Big Beaver Road, Troy, Mich. 48084. Send protests to: Melvin F. Kirsch, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1110 Broderick Tower, 10 Witherell Avenue, Detroit, Mich. 48226.

No. MC 140857TA, filed April 18, 1975. Applicant: EMETT L. BARRICK, doing business as B & B HOT SHOT SERVICE, P.O. Box 94479, Oklahoma City, Okla. 73409. Applicant's representative: Louis J. Bodnar, 417 Couch Drive, Oklahoma City, Okla. 73102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oil field equipment and supplies, including pipe, tanks and tank materials*, weighing 7,000 pounds or less (Hot Shot Service), between all points in Oklahoma and Texas, with transportation for compensation on return, for 180 days. Supporting shippers: There are approximately 7 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: Marie Spillars, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240, Old P.O. Bldg., 215 NW. Third, Oklahoma City, Okla. 73102.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-11347 Filed 4-29-75;8:45 am]

[Notice No. 279]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 30, 1975.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-75756. By application filed April 23, 1975 REGIONAL TRANSPORTATION DISTRICT (RTD) a POLITICAL SUBDIVISION OF THE STATE OF COLORADO, 1325 So. Colorado Blvd., Denver, CO 80222, seeks temporary authority to lease the operating rights of DENVER-BOULDER BUS CO., 1755 Glenarm St., Denver, CO 80202, under section 210a(b). The transfer to REGIONAL TRANSPORTATION DISTRICT (RTD) a POLITICAL SUBDIVISION OF THE STATE OF COLORADO to DENVER-BOULDER BUS CO., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-11348 Filed 4-29-75;8:45 am]

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WEDNESDAY, APRIL 30, 1975

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PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing Production and Mortgage Credit

■

SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM; SUBSTANTIAL REHABILITATION

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-305]

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM—SUBSTANTIAL REHABILITATION

The Department of Housing and Urban Development (HUD), gave notice on December 30, 1974, at 39 FR 45131 that it was amending Title 24 of the Code of Federal Regulations by adding a new Part 1277 to Chapter VIII, effective January 1, 1975.

HUD is renumbering all Parts of Chapter VIII. The regulations below change from Part 1271 to Part 881. All references below are to the new part numbers.'

Part 881 sets forth the essential elements of the Housing Assistance Payments Program for Substantial Rehabilitation, including the roles and responsibilities of HUD, public housing agencies (PHAs), rehabilitators, Owners and Eligible Lower-and Very Low-Income Families, the basis for determining the amount of housing assistance payments, and the prescribed contracts.

Proposed regulations for the Section 8 Substantial Rehabilitation Program were published for comment on November 22, 1974. The comment period was limited to fifteen days because of the statutory requirement that the regulations be made effective by January 1, 1975. In the December 30, 1974, publication of the final regulations HUD solicited additional comments for a period of 30 days.

HUD has received 15 responses to the December 30, 1974, publication. All comments were carefully considered and changes have been made to the regulations, as set forth below, based on these and earlier comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below. It includes comments in response to the November 22, 1974, publication and the December 30, 1974, publication.

1. To facilitate understanding and referencing, §§ 1277.103 *Basic policies* and 1277.218 *Project operation* have been renumbered to give separate section numbers to the paragraphs within them (see §§ 881.103–881.123 and 881.218–881.227, respectively).

2. Some comments pertained to other regulations. For example, comments concerning Fair Market Rents pertain to regulations relating to such rents, 24 CFR Part 888. Similarly, comments concerning computation of income for purposes of determining eligibility and amount of Gross Family Contribution pertain to the regulations concerning these determinations, 24 CFR Part 889.

3. Comments objected to the definition of "substantial rehabilitation," as set forth in § 881.101(b), as being too restrictive. Some urged that recently-completed housing be eligible under Part 881 provided that no more than 40 percent of the units are occupied. HUD's authority to provide assistance payments with respect to substantially rehabilitated housing is limited by section 8(b)(2) of the United States Housing Act of 1937 (USHAct), which states, "the Secretary is authorized to make assistance payments pursuant to contracts with owners or prospective owners who *agree to* construct or *substantially rehabilitate* housing." [emphasis added]. Under this provision, housing which is not constructed pursuant to an Agreement to Enter into a Housing Assistance Payments Contract (Agreement) may not be eligible under Part 881. Such housing may be eligible, however, under the Section 8 Existing Housing Program, 24 CFR Part 882, which provides for the use of recently-completed housing under certain circumstances (see 24 CFR 882.125).

4. Many comments argued that § 881.105(a) should be modified to provide for a separate fee to the Owner for the cost of administration. These comments pointed out that the Owner has additional administrative responsibilities, such as making determinations of Family eligibility and amount of the Gross Family Contribution, beyond his management and maintenance duties, which should be compensated for. In HUD's opinion, the Owner should meet all of his costs on the basis of Contract Rents comparable to rents charged for unassisted units. Although an Owner may have duties under this program which exceed those for unassisted housing, he has compensating advantages in payment assurances provided for temporary vacancies, long-term commitments covering increases in costs, and reliability of housing assistance payments backed up by the commitment of the U.S. Government.

5. Comments suggested that additional assurances should be provided in §§ 881.105 and 881.106 concerning increases in housing assistance payments. The sections have been revised so that whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum commitment under the Housing Assistance Payments Contract (Contract) or the Annual Contributions Contract (ACC), respectively, and would cause the amount in the Project Account to be less than 40 percent of the maximum commitment, HUD will take additional steps authorized by section 8(c)(6) of USH Act to assure that housing assistance payments will be increased within a reasonable period of time.

6. Comments recommended that the 60-day limit on payments to Owners for vacant units (see §§ 881.107(b) and 881.107(c)) be eliminated. The limit is required by section 8(c)(4) of the USHAct which states, "* * * payments may be made with respect to unoccupied units for a period not exceeding 60 days."

7. Many comments proposed that the amount of housing assistance payments for vacant units be increased from 80 to 100 percent of the Contract Rent for such units. Some comments challenged the legal authority of HUD to limit the payments and others expressed doubt that the Contract would provide adequate security without 100 percent coverage. In the regulations published on December 30, 1974, HUD responded to similar prior comments by increasing the percentage from 70 to 80. Section 8(c)(4) of the USHAct does not require assistance payments for vacant units, but only authorizes such payments as permissible. Therefore HUD should attempt to implement this provision with the least amount of Federal expenditure. HUD has concluded that a further increase would reduce the incentive of the Owner to keep the Contract units under lease and is not necessary to provide adequate security to the Owner.

8. Section 881.108(b), which deals with the reasonableness of initial Contract Rents, has been modified to indicate that where tax-exempt financing is used, Contract Rents may be reduced appropriately to reflect any resulting savings. The interest savings from the tax-exempt financing is the result of favorable tax treatment by the Federal Government which provides the subsidy. Section 881.108(c), which related to Contract Rents for HUD-insured projects, has been deleted (see also paragraphs 19 and 20(b) of this preamble).

9. Section 881.109, relating to the Contract term, has been modified so that (a) where the relative cost of the rehabilitation is less than 15 percent of the value of the project after completion of the rehabilitation, the total Contract term for any unit may not exceed 5 years; and (b) where such relative cost is higher, the total Contract term will cover the financing of the cost of rehabilitation, or the remaining term of the existing indebtedness, if that be longer, or will cover the financing of the cost of the rehabilitation and of the acquisition or refinancing of the existing indebtedness (not to exceed 40 years for any unit).

10. Some comments argued that the provision which authorizes special additional adjustments, § 881.110(c), is too restrictive of the types of costs for which adjustments may be provided. Some comments proposed that special additional adjustments cover all costs not covered by the automatic annual adjustments. The statutory authority for these adjustments (section 8(c)(2)(B) of the USHAct) is restricted to "real property taxes, utility rates or similar costs." The regulations also limit special adjustments to real property taxes, utilities and similar costs and defines "similar costs" mean "assessments, and utilities not covered by regulated rates." This definition is consistent with the types of costs specifically enumerated in the statutory provision.

11. Comments objected to the requirement of § 881.117(b) that the Owner maintain at least 30 percent occupancy of Contract units by Very-Low Income Families. It was suggested that the requirement be eliminated at least for small projects and not be applied on a project-by-project basis. Section 8(c)(7) of the USHAct requires that 30 percent of the Families assisted under section 8 be

Very-Low Income Families. Flexibility is permitted for projects developed under the Housing Finance and Development Agencies Program, 24 CFR Part 883, in which the required percentage may vary among projects provided the average for all projects administered by the agency is 30 percent. For projects under the other section 8 programs, the only administratively feasible method of complying with the statute is to apply the 30 percent requirement to each project.

12. Several comments objected that the definitions of "large family" and "very large family," as used in § 881.118 for purposes of identifying those Families for whom housing assistance payments will equal the difference between 15 percent of gross income and the Gross Rent, is too restrictive. The term "large family" is defined as a family which includes six or more minors (other than head of household or the spouse) and the term "very large family" is defined as a family which includes eight or more such members. The comments indicated concern that Families which do not fall within one of these defined categories may be required to pay 25 percent of their gross income toward Gross Rent. This concern is based upon a misunderstanding. HUD has published separate interim regulations covering the determination of Gross Family Contribution (see 40 FR 15541; 24 CFR Part 889). These regulations provide for allowances based on the number of minors (and other factors) to be deducted from the Family's income and for determining the amount of contribution by applying a percentage (25 percent) to the income after making this deduction. Consequently, the amount of the required Gross Family Contribution will take into account the number of minors. The minimum amount will be 15 percent of the Family income before allowances. Many families which do not fall within one of the categories for which a 15 percent contribution rate is required by the USHAct will qualify for the 15 percent rate under this method. Therefore, HUD has limited the definitions of Families who automatically qualify for the 15 percent rate to those in extremely difficult circumstances. HUD believes that this method provides the needed flexibility for differences in size of Family, is administratively feasible, and is responsive to the statutory requirements.

13. Many comments objected to § 881.119(b), the provisions which prohibit the entity which is responsible for administering the Contract (e.g., the PHA in the case of a Private-Owner/PHA Project) from performing the management and maintenance for the same projects. This prohibition is retained in order to avoid the conflict of interest which would exist if the entity which is the Contract administrator, and therefore responsible for enforcement of compliance with management and maintenance requirements, were itself the entity whose compliance must be evaluated and enforced. The regulations pursuant to § 881.124(b) permit the conversion of a Private-Owner/PHA Project to a Private-Owner Project (i.e., the transfer of the responsibility of administering the Contract from the PHA to HUD). After such conversion, the PHA would no longer be precluded from providing management and maintenance services.

14. New §§ 881.120(b) and 881.121(b) have been added to clarify (a) the rights of HUD and, where appropriate, the rights and obligations of the PHA for determinations of Owner defaults under the Contract and the taking of corrective action, and (b) in the case of a Private-Owner/PHA Project, the rights of the Owner in the event of failure of the PHA to comply with the Contract. (See also sections 2.16 and 2.17 of the ACC and sections 2.7 and 2.9 of the Contract.)

15. A new § 881.125, relating to projects for which the interim and permanent financing is provided by a public agency or other entity from the proceeds of the sale of bonds or notes, has been added. This section requires HUD approval of financing documents and submission of certifications by the financing agency concerning, among other things, the projected borrowing and lending rates and the spread, if any, between these rates. It also requires the financing agency to certify that any spread between the actual borrowing and lending rates will be no greater than the projected spread nor greater than the spread allowed for the borrowing as a whole under applicable Department of Treasury regulations regarding arbitrage or applicable HUD regulations under section 11 (b) of the USH Act. The financing agency must also certify that the terms of financing, amount of obligations issued with respect to the project, and use of funds raised will be in compliance with applicable Treasury and HUD regulations. Section 881.125 also requires recoupment of savings in financing cost to the Owner where the interest cost of the interim financing is less than the anticipated cost of the debt service under the permanent financing. It requires reduction in the Contract Rents where the amount of actual debt service is lower than the anticipated debt service on which the Contract Rents were based; and it clarifies the status of the Contract in the event of foreclosure and assignment or sale.

16. Comments suggested that the procedures under which Preliminary Proposals are invited and selected (see §§ 881.203–881.208) be changed so that HUD may negotiate with rehabilitators without advertising for proposals and making selections on a competitive basis. The provisions requiring the published Invitation for Preliminary Proposals and competitive ranking and selection have been retained to provide an opportunity for all interested parties to submit Preliminary Proposals, to encourage the submission of approvable Proposals with reasonable Contract Rents, and to provide a broad range of Proposals from which those which best satisfy the goals of the section 8 program may be selected.

17. A new § 881.203(d) permits selection of an Owner for a site that has been predetermined or preapproved by HUD as a site specifically designated for a section 8 project, such as an urban renewal site identified for such use.

18. Sections 881.204(c)(14) and 881.208(g)(3) have been modified to permit an Owner to submit, simultaneously with the submission of the Preliminary Proposal, or at any time prior to Notification of Selection or Nonselection, a Final Proposal or a Final Proposal and, if required, the architect's certification (in accordance with § 881.211(b)).

19. Section 881.207(a), which concerns processing of a HUD–FHA mortgage insurance application in advance of the section 8 Preliminary and Final Proposals, has been modified so that the Contract Rents which may be approved for the section 8 program will at least equal the previously approved rents which were used in processing the mortgage insurance application.

20. Section 881.207(b) which concerns concurrent processing of HUD–FHA mortgage insurance applications and section 8 Preliminary and Final Proposals has been modified (a) to permit the submission of an application for Firm Commitment (in lieu of the Conditional Commitment) under the applicable mortgage insurance program, with the Final Proposal; and (b) so that the rents of those units scheduled for assisted occupancy, when projected for the purpose of determining a mortgage limitation based on the debt service criteria, may be less than but may not exceed the Contract Rents set forth in the approved Final Proposal.

21. Section 881.203(a), which sets forth procedures for initial screening of Preliminary Proposals by HUD, has been clarified and modified to permit rejection without further evaluation if the Preliminary Proposal does not include or is deficient in identification of the proposed property, an "as-is" description of the property to be rehabilitated, or the proposed Contract Rents.

22. Section 881.215(c), relating to changes from the approved Final Proposal, has been revised so that changes or modifications required by changes in local codes or ordinances, subsequent to the execution of the Agreement, may be reflected in increases in the Contract Rents if HUD approval is obtained prior to incorporation of such changes in the project.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made with respect to these regulations. A copy of this finding is available for public inspection during regular business hours in the office of the Rules Docket Clerk, Room 10245, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C.

These regulations are effective April 30, 1975.

Accordingly, 24 CFR Part 881 is hereby amended to read as follows:

Subpart A—Applicability, Scope and Basic Policies

Sec.
881.101 Applicability and scope.
881.102 Definitions.
881.103 Demonstration of need for substantial rehabilitation projects; compliance with section 213 of HCD Act.
881.104 Preference for certain types of projects.
881.105 Maximum total annual contract commitment and project account (Private-owner or PHA-owner projects).
881.106 Maximum total ACC commitment and project account (private-owner/PHA projects).
881.107 Housing assistance payments to owners.
881.108 Initial contract rents.
881.109 Term of housing assistance payments contract.
881.110 Rent adjustments.
881.111 Types of housing and property standards.
881.112 Site and neighborhood standards.
881.113 Relocation.
881.114 Other Federal requirements.
881.115 Financing.
881.116 Security and utility deposits.
881.117 Establishment of income limit schedules; 30 percent occupancy by very low-income families.
881.118 Establishment of amount of housing assistance payments.
881.119 Responsibilities of the owner.
881.120 Responsibility for contract administration, and defaults (Private-owner and PHA-owner projects).
881.121 Responsibility for contract administration, and defaults (Private-owner/PHA projects).
881.122 Rights of owner if PHA defaults under agreement (Private-owner/PHA projects).
881.123 Separate project requirement.
881.124 Conversions.
881.125 Projects financed with proceeds from sale of bonds or notes.

Subpart B—Project Development and Operation

881.201 Allocations of contract authority to field offices.
881.202 Determination of number and types of units to be assisted.
881.203 Invitations for preliminary proposals.
881.204 Contents of Rehabilitation Program Packet.
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Appendices

NOTE—Various prescribed forms which relate to internal HUD processing procedures are not included herein, but will appear in the HUD Substantial Rehabilitation Handbook.

I. Agreement to enter into Housing Assistance Payments Contract-Private-owner or PHA-owner project.
II. Housing Assistance Payments Contract-Private-owner or PHA-owner project.
III. Annual contributions Contract-Private-owner/PHA project.
IV. Agreement to enter into Housing Assistance Payments Contract-Private-owner/PHA project.
V. Housing Assistance Payments Contract-Private-owner/PHA project.

AUTHORITY: Sec. 7(d); Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); sec. 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Subpart A—Applicability, Scope and Basic Policies

§ 881.101 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families leasing Substantially Rehabilitated housing pursuant to the provisions of section 8 of the U.S. Housing Act of 1937 ("Act").

(b) For the purpose of this part, "Substantially Rehabilitated" housing shall mean housing requiring Substantial Rehabilitation for which, prior to the start of rehabilitation, an Agreement to Enter into Housing Assistance Payments Contract is executed between the Owner and the Department of Housing and Urban Development ("HUD") or the Public Housing Agency. However, housing already undergoing rehabilitation may be eligible for participation if all subsequent actions are in compliance with this part and if the Owner certifies and demonstrates to the satisfaction of HUD that:

(1) At the date of application to HUD, a substantial amount of rehabilitation (generally at least 25 percent) remains to be completed; and

(2) At the date of application to HUD, the project cannot be completed without a commitment for assistance under this part; and

(3) At the time rehabilitation was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

(c) Conversions of section 23 projects to the section 8 program will be permitted where appropriate, provided that all parties (including HUD) agree to the terms and conditions.

§ 881.102 Definitions.

Agreement to Enter Into Housing Assistance Payments Contract ("Agreement"). (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the rehabilitation in accordance with the HUD-approved Final Proposal, HUD will enter into a Housing Assistance Payments Contract with the Owner. (See Appendix I.)

(b) In the case of a Private-Owner/PHA Project, a written agreement between the private Owner and the PHA, approved by HUD, that, upon satisfactory completion of the rehabilitation in accordance with the HUD-approved Final Proposal, the PHA will enter into a Housing Assistance Payments Contract with the private Owner. (See Appendix IV.)

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. In the case of a proposal under which the Families must pay directly for one or more utilities or services, the amount of the Allowance is deducted from the Gross Rent in determining the Contract Rent and is included in the Gross Family Contribution.

Annual Contributions Contract ("ACC"). In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project. (See Appendix III.)

Contract. See definition of Housing Assistance Payments Contract.

Contract Rent. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe, and Sanitary. Housing is Decent, Safe, and Sanitary at completion of rehabilitation if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. (See § 881.216.) Housing continues to be Decent, Safe, and Sanitary if it is being maintained in a condition substantially the same as that on acceptance, in all pertinent respects, including the following:

(a) Condition of the exterior (including the grounds) and the interior of the structure and of the housing unit;

(b) Operating condition of sanitary facilities and of solid and liquid waste disposal facilities;

(c) Operating condition of kitchen facilities, including range and refrigera-

tor, sink, and space for storage of food and for storage of utensils and dishes;

(d) Operating condition of heating, lighting and ventilating equipment and/or other facilities; and

(e) Size, number of rooms, and furnishability in relation to the size and type of Family in occupancy in accordance with any applicable State or local codes.

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, handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in section 3(2) of the Act. A Family's eligibility for housing assistance payments continues until its Gross Family Contribution equals the Gross Rent for the dwelling unit it occupies, but 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 other relevant circumstances during the term of the Contract.

Fair Market Rent. (a) The rent which is determined by HUD as the Fair Market Rent for New Construction projects 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 developed and owned, newly constructed rental housing of modest (nonluxury) nature with suitable amenities and sound architectural design meeting the objectives of the HUD Minimum Property Standards.

(b) Separate Fair Market Rents will be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator, row, detached; housing designed for the elderly or handicapped shall be a separate type for this purpose).

(c) The Fair Market Rents will be published in the Federal Register, and, in order to allow for the period of rehabilitation, computation of the published Fair Market Rents will include HUD's estimate of anticipated rent increases during an appropriate future period as stated in the publication. Accordingly, for any given project for which the scheduled time for rehabilitation will be less than such future period, an appropriate reduction will be made in determining the approvable Contract Rent.

(d) 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 lower as stated in paragraph (c) of this definition and may be higher or lower as provided in § 881.108.

Final Proposal. A proposal to provide Substantially Rehabilitated housing submitted in response to a HUD notification of selection of Preliminary Proposal.

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 Payments Contract ("Contract"). (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix II.)

(b) In the case of a Private-Owner/PHA Project, a written contract between the private Owner and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix V.)

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 § 881.118.)

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.

Invitation for Preliminary Proposals—Substantial Rehabilitation ("Invitation for Preliminary Proposals"). A notice published by HUD inviting the submission of Preliminary Proposals in accordance with this part. (See § 881.203.)

Lease. A written agreement between an Owner and an Eligible Family for the 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.

Local Housing Assistance Plan. A housing assistance plan submitted by a unit of general local government and approved by HUD under section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a housing plan which contains the elements set forth in section 104(a)(4) of the HCD Act and which is approved by the Secretary as meeting the requirements of section 213 of that Act.

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.

New Communities. New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

Owner. Any private person or entity, including a cooperative, or a PHA, having the legal right to lease or sublease Substantially Rehabilitated dwelling units.

PHA-Owner Proposal and PHA-Owner Project. A proposal for a project under this part (and the resulting project) to be owned by a PHA throughout the term) of the Agreement and Contract where such Agreement and Contract are to be entered into between the PHA and HUD.

Preliminary Proposal. A proposal to provide Substantially Rehabilitated housing submitted in response to a HUD Invitation for Preliminary Proposals.

Private-Owner/PHA Proposal and Private-Owner/PHA Project. A proposal for a project under this Part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD.

Private-Owner Proposal and Private-Owner Project. A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

Project Account. The account established and maintained in accordance with §§ 881.105 or 881.106.

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.

Substantial Rehabilitation. (a) The improvement of a property to Decent, Safe, and Sanitary condition and in accord with HUD requirements from a condition requiring more than routine or minor repairs or improvements of such extent as to necessitate execution of an Agreement prior to the performance of the work. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to cosmetic improvements coupled with cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(b) Substantial Rehabilitation also includes renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part (e.g., conversion of a hotel to housing for the elderly).

Substantially Rehabilitated. See § 881.101(b).

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.

§ 881.103 Demonstration of need for substantial rehabilitaation projects; compliance with section 213 of HCD act.

(a) Substantial Rehabilitation projects shall be permitted only where: (1) HUD determines that there is not and there is not likely soon to be an adequate supply of existing housing which, with the aid of housing assistance payments provided under the Section 8 Housing Assistance Payments Program—Existing Housing, can meet the needs of Eligible Families, or (2) the proposed project is specifically approved by HUD in accordance with priorities established from time to time by the Secretary including priorities for New Communities which involve Substantial Rehabilitation.

(b) No proposal for section 8 housing may be approved unless HUD requirements implementing sections 213 (a), (b), and (c) of the HCD Act have been satisfied.

§ 881.104 Preference for certain types of projects.

(a) *20 Percent Projects.* Assistance payments may be made with respect to up to 100 percent of the dwelling units in any structure or project. However, within the category of projects that are not designed for use primarily by the elderly and the handicapped and which involve the rehabilitation of more than 50 units, a preference will be provided for projects in which housing assistance will be limited to 20 percent or less of the units. (See § 881.208(e) (1).)

(b) *Three or More Bedroom Projects.* Where the need for dwelling units of three or more bedroom size ("large dwelling units") is shown, each HUD field office shall be responsible, to the extent feasible, for inviting and selecting proposals which in the aggregate will achieve the goal of providing a number of large dwelling units equal to at least 20 percent of all the assisted units approved under the Section 8 Housing Assistance Payments Program, without undue concentration of such large dwelling units in any one location.

§ 881.105 Maximum total annual contract commitment and project account (private-owner or PHA-owner projects).

(a) *Maximum Total Annual Contract Commitment.* The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.

(b) *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 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 reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 881.106 Maximum total ACC commitment and project account (private-owner/PHA projects).

(a) *Maximum Total ACC Commitment.* The maximum total annual contribution that may be contracted for in the ACC for a project shall be the total of the Gross Rents for all the Contract units in the project, plus a fee for the regular costs of PHA administration, HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(b) *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 ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the 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 Annual Contribution exceeds the maximum ACC commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum ACC 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 reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 881.107 Housing assistance payments to owners.

(a) *General.* 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 as determined in accordance with the HUD-established schedules and criteria. No section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing rather than owner-occupied housing for this purpose.

(b) *Vacancies During Rent-up.* If a Contract unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, in accordance with the procedure set forth in § 881.217(b), provided that the Owner (1) commenced marketing and otherwise complied with § 881.215(f), (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, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(c) *Vacancies After Rent-up.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner 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 in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 881.116). The Owner shall not be entitled to any payment under this paragraph (c) (1) unless he: (i) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs (b) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (c) (1) of this section unless the request for such payment is supported by a certification that (i) he gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in

person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(d) *Prohibition of Double Compensation for Vacancies.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 881.116):

§ 881.108 Initial contract rents.

(a) *Fair Market Rent Limitation.* The sum of the initial Contract Rents and any Allowances for Utilities and Other Services shall not exceed the Fair Market Rents for newly constructed rental housing, except that they may be exceeded (1) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents and the higher rents meet the test of reasonableness in paragraph (b) of this section, or (2) by up to 20 percent, where the Assistant Secretary for Housing Production and Mortgage Credit determines that special circumstances warrant such higher rents or determines that such higher rents are necessary to the implementation of a Local Housing Assistance Plan, and that such higher rents meet the test of reasonableness in paragraph (b) of this section.

(b) *Reasonableness of Rents.* In any case, the Contract Rents as proposed must be determined by HUD to be reasonable in relation to the quality, location, amenities, and management and maintenance services of the project, and proposed rents shall be subject to reduction if they are found to be higher than such reasonable rents. Appropriate reductions to reflect any savings where tax-exempt financing is involved may be made.

§ 881.109 Term of housing assistance payments contract.

(a) Where the relative cost of the rehabilitation is less than 15 percent of the value of the project after completion of the rehabilitation, the Contract shall be for one term of not more than five years for any dwelling unit.

(b) Where the relative cost of the rehabilitation is 15 percent or more, the Contract may be for an initial term of not more than five years for any dwelling unit, with provision for automatic renewal (unless agreed otherwise) for additional terms of not more than five years each, for a total Contract term which will cover the financing of the cost of rehabilitation, or the remaining term of the existing indebtedness, if that be longer, or which will cover the financing of the cost of the rehabilitation and of acquisition or refinancing of the existing indebtedness; provided, however, that the total Contract term, including renewals, for any dwelling unit shall not exceed 20 years, or 40 years where the project is owned by, or financed by a loan or loan guarantee from, a State or local agency.

(c) If the project is completed in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage; provided, however, that the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.

§ 881.110 Rent adjustments.

(a) *Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum amount authorized under the Contract. (See §§ 881.105 and 881.106.)

(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 Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(c) *Special Additional Adjustments.* Special additional adjustments may 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., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall Limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

§ 881.111 Types of housing and property standards.

(a) Existing structures of various types may be appropriate for this program including apartment hotels, single-family houses, and multifamily structures. Hotels or office buildings may be suitable for conversion under this program to housing designed for elderly or handicapped Families and individuals, including congregate housing. Single room occupant housing planned specifically as a relocation resource for eligible single persons may also be developed. Units in highrise elevator buildings may not be used for Families with children unless HUD determines there is no practical alternative. Mobile homes may not be utilized in this program.

(b) Participation in this program requires compliance with (1) HUD Minimum Design Standards for Rehabilitation for Residential Properties, (2) in the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards, (3) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly or handicapped, (4) HUD requirements pertaining to noise abatement and control, (5) HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and (6) applicable State and local laws, codes, ordinances, and regulations.

§ 881.112 Site and neighborhood standards.

Proposed sites for Substantial Rehabilitation projects must be approved by HUD as meeting the following standards:

(a) Adequate utilities (water, sewer, gas and electricity) and streets shall be available to service the site.

(b) The site and neighborhood shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower-income persons.

(d) The site shall be free from serious, adverse environmental conditions, or there shall be evidence that any such conditions will be corrected by the time the rehabilitation is completed.

(e) The site shall comply with any applicable conditions in the Local Housing Assistance Plan, approved by HUD.

(f) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard housing of similar market rents.

(g) Travel time and cost via public transportation or private automobile, from the neighborhood to places of empoyment providing a range of jobs for lower-income workers, shall not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(h) The project may not be on a site which has occupants unless the relocation requirements referred to in § 881.113 are met.

(i) The project may not be in an area that has been identified by HUD as having special flood hazards and in which

the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

§ 881.113 Relocation.

(a) In the evaluation or selection of Preliminary Proposals, consideration shall be given to whether there are site occupants who would have to be displaced, whether there is a feasible plan for relocation of such occupants, the degree of hardship which displacement might cause, and the availability of funding for relocation payments and assistance. Greater weight shall be given to proposals which do not require displacement, or, where displacement is required, which will involve the least amount of hardship.

(b) In the case of a PHA-Owner Project, no Agreement shall be executed for housing which is to be rehabilitated on a site which has occupants unless the Agreement provides that, pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the PHA undertakes liability for (1) the provision of relocation payments and assistance as prescribed in sections 202, 203, and 204 of the Act; (2) the provision of relocation assistance programs offering the services described in section 205 of the Act; and (3) assuring that within a reasonable period of time prior to displacement, Decent, Safe, and Sanitary replacement dwellings will be available to displaced persons. The Agreement shall provide that the PHA will provide full funding for the required relocation payments and assistance unless other commitments, satisfactory to HUD, have been made for the funding of such payments and assistance. (In the case of a Private-Owner Project or a Private Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

§ 881.114 Other Federal requirements.

(a) *Equal Opportunity Requirements.* Participation in this program requires compliance with (1) 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 (2) all rules, regulations, and requirements issued pursuant thereto.

(b) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all rules, regulations, and requirements issued pursuant thereto.

(c) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all rules, regulations, and requirements issued pursuant thereto.

(d) *Davis-Bacon Wage Rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any Substantial Rehabilitation project with nine or more assisted units.

§ 881.115 Financing.

(a) *Types.* Any type of financing may be utilized, including, but not limited to, the types listed below.

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions.

(2) Mortgage insurance programs under the National Housing Act (see § 881.207). (With respect to any obligation secured by a mortgage insured under section 221(b)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8, the interest paid on such obligation shall be included in gross income for purposes of Chapter I of the Internal Revenue Code of 1954.)

(3) Home Improvement Loans under Title I of the National Housing Act.

(4) Section 202 of the Housing Act of 1959.

(5) Title V of the Housing Act of 1949.

(6) Financing by tax-exempt bonds or other obligations. Where the project is owned by a non-profit corporation which is an agency or instrumentality of a PHA, and the financing is provided by the non-profit corporation or the PHA, the project will be considered as a PHA-Owner Project.

(b) *Use of Contract as Security for Financing.* (1) An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this part; *Provided, however,* That such security is in connection with a project rehabilitated pursuant to this part, and the terms of the financing or any refinancing have been approved by HUD. It is the Owner's responsibility to request such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment that HUD is requested to approve. Where the methods and terms of financing require, the Contract Rents may be reduced in accordance with § 881.108(b).

(2) Any pledge of the Agreement, Contract, or ACC, or payments thereunder, shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.

(3) In the event of foreclosure, including foreclosure by HUD, and in the event of assignment or sale agreed to by HUD or made to HUD, housing assistance payments shall continue in accordance with the terms of the Contract.

§ 881.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local law, 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 or the PHA, as appropriate, 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.

§ 881.117 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 the initial renting of Contract units, the Owner shall lease at least 30 percent to Very Low-Income Families and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families, provided that if this requirement with respect to initial rent-up cannot be met because of Families already residing in the property to be rehabilitated, HUD may adjust the percentage of Very Low-Income Families to the extent that the adjustment is compensated for by a higher than 30 percent requirement with respect to such Families in other projects.

§ 881.118 Establishment of amount of housing assistance payments.

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 (a) no less than 15 percent nor more than 25 percent of the Family's Income and (b) 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).

§ 881.119 Responsibilities of the Owner.

(a) The Owner shall be responsible (subject to post-review or audit by HUD or the PHA, as the case may be) for management and maintenance of the project. 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 funtctions 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;

(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 the PHA or HUD, as appropriate, of any applicable Allowance for Utilities and Other Services; and

(9) Compliance with equal opportunity requirements.

(b) Subject to HUD approval, any private 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. However, no entity which is responsible for administration of the Contract (for example, a PHA in the case of a Private-Owner/PHA Project) may contract to perform management and maintenance of the project; *Provided, however,* That this prohibition shall not preclude management by the PHA in the event it takes possession as the result of foreclosure or assignment in lieu of foreclosure. (See, however, § 881.123(b) which permits conversion of a Private-Owner/PHA Project to a Private-Owner Project.)

§ 881.120 Responsibility for contract administration, and defaults (private-owner and PHA-owner projects).

(a) *Contract Administration.* 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) *Defaults by Owner.* The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is in default under the Contract, HUD shall notify the Owner of the actions required to be taken to cure the default 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 cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 881.121 Responsibility for contract administration, and defaults (private-owner/PHA projects).

(a) *Contract Administration.* The PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD.

(b) *Defaults by PHA and/or Owner.* (1) The ACC and the Contract shall contain a provision to the effect that in the event of failure of the PHA to comply with the Contract with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity to take corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assume the PHA's rights and obligations under the Contract and carry out the obligations of the PHA to the Owner.

(2) The ACC shall contain a provision to the effect that if the PHA fails to comply with any of its obligations (including specifically failure to enforce its rights under the Contract, in the event of any default by the Owner, to achieve compliance to the satisfaction of HUD or to terminate the Contract in whole or in part, as directed by HUD), HUD may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that there is a substantial default and require the PHA to assign to HUD all of the PHA's rights and interests under the Contract. In such case, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract.

(3) The Contract shall contain a provision to the effect (i) that if the PHA determines that the Owner is in default under the Contract, the PHA shall notify the Owner, with a copy to HUD, of the actions required to be taken to cure the default and of the remedies to be applied by the PHA including abatement of housing assistance payments and recovery of overpayments, where appropriate; and (ii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD. If the PHA is the lender, the Contract shall also provide that HUD has an independent right to determine whether the Owner is in default and to take corrective action and apply appropriate remedies, except that HUD shall not have the right to terminate the Contract without proceeding in accordance with paragraph (b) (2) of this section.

§ 881.122 Rights of owner if PHA defaults under agreement (private-owner/PHA projects).

The ACC and the Agreement shall contain a provision to the effect that in the event of failure of the PHA to comply with the Agreement with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity to take corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assume the PHA's rights and obligations under the Agreement, and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

§ 881.123 Separate project requirement.

(a) In the case of a Private-Owner Project or a PHA-Owner Project, each Agreement and Contract shall constitute a separate project.

(b) In the case of a Private-Owner/PHA Project, such project may not include more than one type of section 8 assistance, shall be processed with a separate ACC List and ACC Part I and shall be assigned a separate project number. All Substantial Rehabilitation units to be placed under a single Contract shall comprise a separate project. However, the field office director may designate as a single project the units to be covered by two or more such Contracts for Substantial Rehabilitation projects where:

(1) The units are placed under ACC on the same date; and

(2) Such consolidation is necessary in the interest of administrative efficiency.

§ 881.124 Conversions.

(a) *Conversion of Private-Owner Project to Private-Owner/PHA Project.* HUD may request the Owner of a Private-Owner Project and an appropriate PHA to agree, if they are willing, to a conversion of any such project to a Private-Owner/PHA Project if HUD determines that such conversion would promote efficient project administration.

(b) *Conversion of Private-Owner/PHA Project to Private-Owner Project.* The private Owner and the PHA, in the case of a Private-Owner/PHA Project, may request HUD to agree to a conversion of any such project to a Private-Owner Project. HUD shall agree to such conversion if it determines it to be in the best interest of the project.

§ 881.125 Projects financed with proceeds from sale of bonds or notes.

(a) *Applicability of this section.* The provisions of this section shall apply where the interim and permanent financing for a project is to be provided by a public agency or other entity including a PHA ("financing agency") from the proceeds of the sale of bonds or notes.

(b) *Submission of Financing Documents to HUD.* (1) Before HUD may approve a Final Proposal which is to be

financed in a manner subject to this section, the financing agency shall submit to the appropriate HUD field office or offices copies of the documents relating to the method of financing of the project, such documents to include the bond resolution or indenture, loan agreement, regulatory agreement, note, and mortgage or deed of trust and other related documents, if any, including the "official statement" or "prospectus", if available at that time, or as soon as it is available. After prompt review, HUD shall notify the financing agency that the documents are acceptable or, if unacceptable, shall request clarification or changes. In the event a financing agency which has obtained HUD approval of its financing documents proposes substantive changes in the documents, whether by way of amendment, replacement or supplementation, such changes must be submitted to HUD for prior approval.

(2) The financing agency shall also submit a certification specifying (i) its projected rate (net interest cost) of the borrowing from which funds will be used for financing (interim and permanent) the project, (ii) the projected rate at which interim financing will be provided to the Owner for the project, (iii) the projected capital cost of the project and the projected rate and the term of the permanent financing to be provided to the Owner for the project, (iv) the projected monthly debt service for such permanent financing on which Contract Rents are based, and (v) the spread, if any, between the projected rate of borrowing and the projected rate of lending to the Owner. The financing agency shall also certify (vi) that the spread, if any, between its actual rate of borrowing and the actual rate of lending to the Owner for the project will not be greater than the projected spread nor greater than the spread allowed for the borrowing as a whole under the Department of Treasury regulations regarding arbitrage if the borrowing is subject to those regulations, or the HUD regulations under section 11(b) of the United States Housing Act of 1937 (24 CFR 811.101) if the borrowing is by a PHA under that § 811.101, and (vii) that the terms of the financing, the amount of the obligations issued with respect to the project, and the use of the funds raised will be in compliance with applicable Department of Treasury regulations regarding arbitrage or HUD regulations in § 811.101. The term "spread" means the difference between the net interest cost on financing agency obligations issued in connection with a project and the effective rate of interest (i.e., including the servicing charge) payable by the Owner.

(3) The financing agency shall retain in its files, and make available for HUD inspection, the documentation relating to its financing of section 8 projects, including any certifications of compliance with the applicable Department of Treasury or HUD regulations.

(c) *Recoupment of Savings in Financing Cost.* (1) In the event that the interim financing is continued beyond one year from the effective date of the Contract and the interest cost of the interim financing for any period of three months, after such first year, is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an appropriate amount reflecting the savings in financing cost shall be credited by HUD to the Project Account pursuant to §§ 881.105 or 881.106, as appropriate, and withheld from housing assistance payments to the Owner. If during the course of the same year there is any period of three months in which the financing cost is greater than the anticipated debt service under the permanent financing, an adjustment shall be made so that only the net amount of savings in financing cost for the year is credited by HUD to the Project Account and withheld from housing assistance payments to the Owner as aforesaid (no increased payments shall be made to the Owner on account of any net excess for the year of actual interim financing cost over the anticipated debt service under the permanent financing). Nothing in this paragraph (c) shall be construed as requiring a reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with § 881.110.

(2) The computation and recoupment under this paragraph (c) may be made on an annual or on a quarterly or other periodic basis, but in any event no later than as of the end of each fiscal year; *Provided, however,* That if recoupment is to be made less often than quarterly, the amounts of recoupment shall be computed on at least a quarterly basis and the funds deposited in a special account from which withdrawals may be made only with the authorization of HUD or other entity administering the Contract.

(d) *Adjustment to Reflect Actual Cost of Permanent Financing.* After the project is permanently financed, the financing agency shall submit a certification as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents, or the Contract Rents currently in effect, shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum ACC or Contract commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

(e) *Use of Contract as Security for Financing.* (1) An Owner or financing agency may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this part, and a financing agency may pledge ACC payments as security for housing assistance payments pursuant to the Contract; *Provided, however,* That such security is in connection with a project rehabilitated pursuant to this part, the terms of the financing or any refinancing have been approved by HUD in accordance with this section, and the financing agency has submitted a certification that the terms and conditions of the financing for the particular project are consistent with those specified in the documents which were approved by HUD. Any such pledge shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.

(2) In the event of foreclosure, or assignment or sale to the financing agency in lieu of foreclosure, or in the event of assignment or sale agreed to by the financing agency and approved by HUD (which approval shall not be unreasonably delayed or withheld), housing assistance payments shall continue in accordance with the terms of the Contract.

Subpart B—Project Development and Operation

§ 881.201 Allocations of contract authority to field offices.

HUD will allocate to field offices contract authority for the Section 8 Housing Assistance Payments Program for metropolitan areas and for nonmetropolitan areas in conformance with section 213(d) of the HCD Act.

§ 881.202 Determination of number and types of units to be assisted.

Each field office shall, after considering the contents of any Local Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, determine the number and types of units to be advertised for new construction and for substantial rehabilitation, and to be made available for existing housing. The field office will also determine an appropriate schedule for advertising for Preliminary Proposals—Substantial Rehabilitation.

§ 881.203 Invitations for preliminary proposals.

(a) *Publication.* The HUD field office shall initiate implementation of its program with respect to Substantial Rehabilitation by publishing Invitations for Preliminary Proposals—Substantial Rehabilitation in accordance with the schedule established by the field office. Such publications shall be at least once a week on the same day or days of each of two consecutive weeks in a newspaper(s) of general circulation serving the area(s) for which proposals are desired. As promptly as possible, HUD will also notify minority media, business concerns included in HUD's registry of section 3 businesses for the applicable political jurisdictions, minority organizations involved in housing and community development, and fair housing groups. In addition, to the extent feasible, HUD may notify appropriate PHAs, the chief executive officer of the appropriate unit(s) of general local government, trade journals, and other non-minority media. Copies of each Invitation shall be available in the HUD field office.

(b) *Contents of Invitation.* The Invitation shall state the geographic area or areas in which the housing is to be rehabilitated; the number of units in each area; the deadline for receipt of Preliminary Proposals by HUD; such other basic information as the field office may

wish to specify; and the fact that detailed information, guidelines, standards and procedures are contained in a Rehabilitation Program Packet which may be obtained by interested parties from the field office. The Invitation shall also state that Preliminary Proposals may be submitted by private Owners or PHA Owners for direct contracting with HUD, or by PHAs on behalf of private Owners with whom the PHA proposes to contract pursuant to an ACC with HUD.

(c) *Deadline for Receipt of Preliminary Proposals.* The deadline (date and time) for receipt of Preliminary Proposals by HUD shall allow a reasonable time but, in any event, no less than 35 calendar days after the date of the first publication in a newspaper of general circulation.

(d) *Preapproved Properties.* Notwithstanding the foregoing provisions of this section, in the case of a property that has been predetermined or preapproved by HUD for assisted housing, such as an urban renewal site which has been specifically designated for such use—if the unit of general local government so requests—the Owner may be selected by the local governmental agency in accordance with the applicable procedures (e.g., the developer of an urban renewal site), unless he has already been so selected by the agency, or he may be selected by HUD after advertising for Preliminary Proposals solely for that property.

§ 881.204 Contents of rehabilitation program packet.

The Rehabilitation Program Packet shall:

(a) Include a copy of the applicable regulations, required HUD forms, and HUD standards.

(b) Include the following information for each geographic area specified in the Invitation.

(1) The number of units for elderly and nonelderly occupancy and the number to be specially designed for elderly (including handicapped) occupancy.

(2) The number of units by unit size (bedrooms per unit) and the fact that a proposal may be for any number of units up to that amount.

(3) The type of housing, if any, which is unacceptable (e.g., high-rise elevator structures for Families with children).

(4) Special requirements, if any, as to location and density; and as to New Communities where Substantial Rehabilitation is involved.

(5) Any special requirements for housing for the elderly (including the handicapped) pursuant to section 209 of the HCD Act, and any special requirements for the handicapped pursuant to the standards established by HUD under Public Law 90-480.

(6) Any special requirements or restrictions that may be necessary for compliance with provisions of the Local Housing Assistance Plan, if any, and the name, address, and title of the official of the unit of general local government to whom inquiries may be made concerning such Plan.

(7) The fact that if the utility combination (the specific types of utilities and methods of distribution) proposed is determined by HUD not to be the most desirable or economical and a change to a different combination is feasible, the Owner will be requested to modify his Proposal or submit a comparative analysis of utility costs supporting to HUD's satisfaction the proposed combination included in the Proposal.

(8) The specific management and maintenance services required to be provided by the Owner. Such services shall include all services typically provided in the area for the type of housing contemplated.

(9) The Fair Market Rents and the fact that rents requested by the Owner must be determined by HUD to be reasonable in accordance with § 881.108(b).

(10) Maximum initial term of the Contract and the fact that the maximum approvable term, including renewals, will be determined in accordance with § 881.109.

(c) Include statements as to: (1) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units); an assurance of compliance with Title VI of the Civil Rights Act of 1964; an assurance of compliance with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto; and certifications required pursuant to Executive Order 11246.

(2) HUD regulations and other requirements implementing section 3 of the Housing and Urban Development Act of 1968, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(3) HUD relocation requirements.

(4) HUD requirements implementing the National Environmental Policy Act.

(5) Governmental requirements implementing the Clean Air Act and the Federal Water Pollution Control Act.

(6) HUD requirements implementing the Flood Disaster Protection Act of 1973.

(7) The requirement, if a project will contain nine or more Contract units, that all laborers and mechanics employed in the development of the project shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act.

(8) The prescribed HUD form showing the identity of the Owner, the rehabilitator, the architect (if any), and the managing agent (if any); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest.

(9) The requirement that the Owner submit evidence of capability to provide the required management and maintenance services or, if the proposal is for 15 or more units, evidence of management capability and a proposed management plan and a certification by the Owner and the management agent, if any, in a format acceptable to HUD.

(10) The fact that if the Owner intends to pledge, or offer as security for any loan or obligation, an Agreement or Contract, he is responsible for submitting to HUD a request for such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment; and that if the request is made after approval of the Final Proposal, the Contract Rents may be reduced where the methods and terms of financing require. (See § 881.115.)

(11) Other requirements which the HUD field office determines to be necessary.

(12) Where copies of HUD Minimum Design Standards for Rehabilitation for Residential Properties and any other applicable standards, guidelines and criteria may be obtained.

(13) The number of copies of the Preliminary Proposal to be submitted to HUD.

(14) The fact that an Owner may submit simultaneously with the submission of the Preliminary Proposal, or at any time prior to Notification of Selection or Nonselection, a Final Proposal or a Final Proposal with the architect's certification (if required) in accordance with § 881.211(b).

(15) The fact that HUD may determine not to select or approve any or all Preliminary Proposals submitted.

§ 881.205 Contents of preliminary proposal.

Each Preliminary Proposal shall include or indicate the following:

(a) The address(es) of the property proposed to be rehabilitated and a neighborhood map showing the location(s) of the property and the racial composition of the neighborhood(s).

(b) A copy of the option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the property to be rehabilitated (however, only the proposed price is required for a New Communities project).

(c) A description of the property as is, including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, special amenities or features, if any, and exterior and interior photos; and sketches of the interior showing dimensions.

(d) A description of the proposed rehabilitation covering each basic element (e.g., roof, exterior walls, porches and steps; interior walls, ceilings and floors; kitchen and bathroom facilities and equipment; plumbing, heating and electrical equipment; landscaping; etc.) indicating the nature of the work to be done on each element. If alteration, renovation or remodeling is indicated, a description of such work and sketches

showing layout after completion of rehabilitation.

(e) A description of the existing utility combination, whether or not a change to a different combination is proposed, and if so, a description of the new utility combination.

(f) A statement as to whether or not the services of a registered architect will be utilized for preparation of final working drawings and specifications.

(g) The Contract Rent per unit, by size and structure type.

(h) The equipment to be included in the Contract Rent.

(i) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not included in the Contract Rent, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(j) The proposed term of the Contract (including renewals) and justification for such term in accordance with Sec. 881.109.

(k) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the provisions of the Local Housing Assistance Plan, if any.

(l) Whether the proposed project will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status, and whether they are owners or renters), and shall show that there is a feasible plan for relocation and how necessary relocation payments, if any, will be funded.

(m) Equal Employment Opportunity Certification, using the prescribed form.

(n) The identity of the Owner, rehabilitator (if known), and architect (if applicable and identity is known); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(o) Whether the Owner intends to provide management services or to contract with a managing agent. In the latter case, provide the identity of the managing agent, if known, and the other information as specified in paragraph (n) of this section.

(p) The proposed method and terms of financing, if available, and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 881.115 (b)). If the Owner proposes to utilize FHA mortgage insurance, the prescribed FHA form should be completed and submitted with the Preliminary Proposal.

(q) Whether the Owner proposes to limit the number of assisted units to 20 percent of the dwelling units in the project.

§ 881.206 Submission of preliminary proposals.

(a) Preliminary Proposals shall be submitted to HUD on or before the published deadline date and time for opening, in the number of copies specified in the Rehabilitation Program Packet. Proposal documents shall be sealed in an inner envelope marked "Sealed Proposal—Open on [date and time specified in the Invitation"]. This sealed proposal shall be submitted in an outer envelope or package which shall show the name of the locality, be addressed to the HUD field office, and be clearly and distinctively marked "Section 8 Housing Assistance Payments Program—Substantial Rehabilitation Preliminary Proposal."

(b) Submission of Preliminary Proposals shall be by hand delivery or certified mail. Any Preliminary Proposal received by HUD after the deadline date and time shall not be accepted but shall be returned unopened. No Preliminary Proposal shall be opened by HUD until the deadline.

§ 881.207 Proposals involving HUD–FHA mortgage insurance.

A proposed project which qualifies as a Substantial Rehabilitation project under Section 8 may fail to qualify as a substantial rehabilitation project under mortgage insurance programs (because of the difference in the definition of "substantial rehabilitation").

(a) *Advance Mortgage Insurance Processing.* This paragraph (a) applies to Owners who apply for HUD–FHA mortgage insurance, prior to the submission of a Preliminary Proposal under this part. Such an Owner may apply for a Feasibility Letter, a Conditional Commitment, or a Firm Commitment for mortgage insurance by submitting an application on the prescribed form with supporting exhibits and the required fee. Such an application will have to meet all applicable mortgage insurance criteria and underwriting standards without modification and without reliance upon housing assistance payments under this part, or, in the alternative, approval for mortgage insurance shall be conditioned upon subsequent approval of a Section 8 proposal for the same project. If a Feasibility Letter, Conditional Commitment, or Firm Commitment, whichever is applicable, is issued, and if prior to expiration thereof the Owner submits a Preliminary Proposal under this part which is consistent with the proposal as approved for mortgage insurance, such proposal will nevertheless be subject to review and evaluation in accordance with the procedures under this part; however, if the Preliminary Proposal is selected in accordance with the procedures under this part, further processing will be coordinated in accordance with paragraph (b) of this section to the extent applicable, and the rents which may be approved for such a Preliminary Proposal will not be less than the previously approved rents which were used in processing the mortgage insurance application provided that they are otherwise approvable in accordance with this part.

(b) *Concurrent Processing.* The provisions of this paragraph (b) apply where the Preliminary Proposal indicates an intention to finance a project with a HUD–FHA insured mortgage. Such a Preliminary Proposal will not be selected under this part unless it meets the market and site acceptability criteria of the applicable mortgage insurance program except as modified by this paragraph. The processing of such a proposal for mortgage insurance will be integrated with the section 8 review and evaluation process. Selection by HUD of such a Preliminary Proposal for preparation of a Final Proposal will be made only where HUD has also determined that the proposal will qualify for mortgage insurance subject to a satisfactory demonstration by the Owner of his capability to complete the project, and subject to subsequent determinations of "as is" value, the loan amount and credit approval.

(1) A Section 8/HUD–FHA mortgage insurance project will be required to meet the marketability test of the applicable mortgage insurance program; provided, however, that the number of units in the proposal for which housing assistance payments are to be made available will be considered as an addition to the effective demand for unassisted rental units. As in the case of any other market analysis for market rate unassisted mortgage insurance programs, the supply of suitable vacant existing units, units under construction, and units in process must be subtracted from the estimate of total effective demand. Consequently, Section 8/HUD–FHA insured units could be added to a market in which supply and demand are in equilibrium or in which there is an undersupply of rental units, but could not be added to a market in which there is an oversupply of rental units in the same competitive range of market rents as the proposed Section 8/HUD–FHA insured project.

(2) After selection of a Preliminary Proposal which involves HUD–FHA mortgage insurance the Owner will be required to submit, with the Final Proposal, an application for HUD–FHA Conditional or Firm Commitment with the required fee under the applicable mortgage insurance program. Such Final Proposals will not be approved under Section 8 unless they also qualify for issuance of a HUD–FHA Conditional or Firm Commitment under the applicable mortgage insurance program. The HUD notification of approval of the Final Proposal will be accompanied by a HUD–FHA Conditional or Firm Commitment for HUD–FHA mortgage insurance. The Owner's acceptance of HUD's notification of approval of the Final Proposal will constitute concurrent acceptance of the conditions and terms of the HUD–FHA Conditional or Firm Commitment for mortgage insurance. The Owner will be required to obtain a Firm Commitment prior to the execution of the Agreement.

(3) The rents of those units scheduled for assisted occupancy, when projected for the purpose of determining a mortgage limitation based on the debt service criterion, shall not exceed the Contract Rents set forth in the approved Final Proposal.

(c) *Delayed Mortgage Insurance Processing.* Where an Owner does not indicate in his Preliminary Proposal that he intends to utilize HUD–FHA mortgage insurance and applies for HUD–FHA mortgage insurance after HUD approval of the Preliminary Proposal under this part, he risks (1) having his approved proposal rejected for HUD–FHA mortgage insurance and (2) having lower rents approved under the mortgage insurance program than the rents set forth in the approved proposal under this part.

§ 881.208 Screening and evaluation of preliminary proposals.

(a) *Initial Screening.* Promptly after the deadline date for receipt of Preliminary Proposals, HUD will screen all the proposals to determine which are complete and responsive and eligible for further processing. If the Proposal does not include, or is deficient with respect to, identification of the proposed property, an "as is" description of the property to be rehabilitated, or the proposed Contract Rents, it shall be rejected. If the Proposal lacks, or is deficient with respect to, any of the other required elements, the HUD field office shall give the Owner the shortest reasonable time (generally not to exceed 10 days) to supply the omitted items or remedy the deficiency.

(b) *Notice to Unit of General Local Government.* Within 10 working days after the deadline date for receipt of proposals (or after the appropriate later date for proposals completed pursuant to paragraph (a) of this section), the HUD field office shall, for purposes of compliance with section 213 of the HCD Act, forward, under cover of a letter in the appropriate prescribed form, a copy of each complete and responsive Preliminary Proposal to the chief executive officer (or such designee as such officer may designate in writing to the HUD field office) of the unit of general local government in which the proposed housing is to be located. The cover letter will invite a response within 30 days from the date the letter and copy of the proposal are received.

(c) *Evaluation of Preliminary Proposals by HUD.* HUD may begin its evaluation promptly after the deadline date, but no selection or ranking may be completed until the response period referred to in paragraph (b) of this section has ended. Each Preliminary Proposal will be evaluated by HUD on the basis of all pertinent factors under this part including, but not limited to, the best combination of rent, location (site) of property to be rehabilitated, rehabilitation plan or design and previous experience of the proposed Owner and on the basis of comments, if any, received during the response period from the unit of general local government.

(d) *Selection Where Approvable Proposals Do Not Exceed Number of Units Advertised.* For each geographic area HUD will determine which Preliminary Proposals, in its judgment, can be developed into Final Proposals meeting the requirements of the Rehabilitation Program Packet. If the units covered by approvable Preliminary Proposals could all be accommodated in the number of units (by unit size) specified in the Invitation, no ranking in accordance with paragraph (e) of this section is necessary. The field office shall determine whether the results of a tentative selection would result in an undue concentration of assisted persons in areas containing a high proportion of low income persons. If so, the field office shall make such revisions in the tentative selections as it may determine to be necessary.

(e) *Selection Where Approvable Proposals Exceed Number of Units Advertised.* If the units covered by acceptable Preliminary Proposals cannot all be accommodated by the number of units (by unit size) specified in the Invitation, HUD will proceed as follows: (1) Proposals consisting of projects to be developed entirely or predominantly for the elderly shall be listed in rank order and a second rank listing shall be established for projects to be developed entirely or predominantly for the non-elderly.

(2) With respect to the listing of proposals for elderly housing, the HUD field office will identify for selection the highest ranking proposals in descending order which will most nearly provide the number of units of elderly housing called for in the Invitation.

(3) With respect to the listing of proposals for the non-elderly housing, the HUD field office will identify for selection the highest ranking proposals in descending order which collectively will most nearly provide the number and sizes of units of non-elderly housing called for in the Invitation; *Provided however,* That if there is a Preliminary Proposal for rehabilitation of more than 50 units of non-elderly housing which indicates that assistance will be limited to 20 percent or less of the units to be rehabilitated, this proposal shall be given priority over the lowest ranking proposal(s) identified for selection which is for more than 50 units and which is for generally the same number and sizes of units.

(4) The field office shall determine whether the combined results of the tentative selections from both listings would exceed the number and sizes of units called for in the Invitation or would result in an undue concentration of assisted persons in areas containing a high proportion of low income persons. If so, the field office shall make such revisions in the tentative selections as it may determine to be necessary.

(f) *Use of Residual Units.* For any residual number of units, HUD may publish another Invitation for Proposals, but this shall not delay the further processing of those Preliminary Proposals submitted and selected as a result of the prior Invitation.

(g) *Notification of Selection.* (1) With respect to those Preliminary Proposals which have been selected in accordance with this section, HUD will notify the Owners, on a prescribed form, and request them to submit within a reasonable time (to be specified in the notification) a Final Proposal in accordance with the requirements of the provisions of § 881.209. The notification shall specify:

(i) The Contract Rents that will be acceptable to HUD where these are lower than the Contract Rents proposed by the Owner, and the reason for the reduction;

(ii) The term of the Contract that will be acceptable to HUD where it is shorter than the term proposed by the Owner, and the reason for the shorter term;

(iii) That the services of a registered architect must be utilized where HUD has determined that the nature and extent of the rehabilitation requires the utilization of such services;

(iv) The estimate of the amount of relocation payments, where applicable; and

(v) Other special conditions or requirements, if any.

(2) The notification will request the Owner to return a copy of the notification with an indication of his acceptance thereof by a specified date. If the Owner does not accept the notification by the date specified, HUD may rescind the notification and select another approvable proposal.

(3) If the Owner has already submitted a Final Proposal (see § 881.204(c)(14)), the notification will state that upon acceptance of the notification by the Owner, HUD will evaluate the Final Proposal in accordance with § 881.210.

(h) *Notification of Nonselection.* Owners whose Preliminary Proposals were not selected by HUD shall be sent a letter notifying them of such determination.

§ 881.209 Final proposals.

(a) *Contents of Final Proposal.* Each Final Proposal shall indicate or include the following:

(1) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the property to be rehabilitated (however, only the proposed price is required for a New Communities Project).

(2) A description of the proposed rehabilitation covering each basic element (e.g., roof, exterior walls, porches and steps; interior walls, ceilings, and floors; kitchen and bathroom facilities and equipment; plumbing, heating and electrical equipment; landscaping; etc.) indicating the nature of the work to be done on each element and the grade and quality of the work, materials and equipment. If alteration, renovation or remodeling is indicated, preliminary drawings and plans and outline specifications on the prescribed form.

(3) A description of the proposed utility combination.

(4) The Contract Rent per unit, by size and structure type.

(5) The equipment to be included in the Contract Rent.

(6) The utilities and services to be included in the Contract Rent and those utilities and services not so included.

For each utility and service not so included, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(7) In the case of a PHA-Owner Project, a statement that the PHA undertakes liability for (i) the provision of relocation payments and assistance as prescribed in sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; (ii) the provision of relocation assistance programs offering the services described in section 205 of the Act; (iii) assuring that within a reasonable period of time prior to displacement, Decent, Safe, and Sanitary replacement dwellings will be available to displaced persons; and (iv) full funding of the required relocation payments and assistance unless other commitments, satisfactory to HUD, have been made for the funding of such payments and assistance. In the latter case, the PHA shall specify such other commitments. (In the case of a Private-Owner Project or a Private-Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

(8) The proposed term of the Contract (including all renewals) and justification for such term in accordance with Sec. 881.109.

(9) Submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units), a signed assurance of compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and certifications required pursuant to Executive Order 11246.

(10) Submissions as required by HUD regulations and other requirements pursuant to section 3 of the Housing and Urban Development Act of 1968.

(11) The identify of the Owner, rehabilitator, architect (if applicable), and managing agent (if any); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(12) Submission of evidence of management capability and a proposed management plan and a certification by the Owner and the management agent, if any, in a format acceptable to HUD; or, if the proposal is for less than 15 units, evidence of capability of providing the required management and maintenance services. If the Owner proposes to contract with another entity, including a PHA, for management and/or maintenance services for the project, he shall include a copy of the proposed contract(s).

(13) Submission of the form of Lease the Owner proposes to use, which shall be in accordance with § 881.219.

(14) The proposed method and terms of financing and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 881.115(b)). If the Owner intends to utilize FHA mortgage insurance, an application for a Conditional or Firm Commitment on the prescribed form shall be completed and submitted with the prescribed fee with the Final Proposal unless this was previously done.

(15) Evidence that the proposed rehabilitation is permissible under the applicable zoning, building, housing and other codes, ordinances or regulations; or a statement of the proposed action to make the rehabilitation permissible and that such action will be successfully completed prior to the Owner's acceptance or the architect's certification (if required) pursuant to § 881.211(b).

(16) The anticipated time required for completion of the rehabilitation after the Agreement is signed (if the project is to be completed in stages, identification of the units comprising each stage and the estimated dates for commencement and completion of each stage).

(b) *Consistency with Preliminary Proposal.* The Final Proposal shall be consistent with the Preliminary Proposal. Any material deviations from the Preliminary Proposal in the Final Proposal will cause reconsideration by HUD of such Final Proposal and may result in its rejection.

§ 881.210 Evaluation of final proposals.

(a) *Evaluation of Final Proposals by HUD.* Each Final Proposal will be evaluated by HUD to determine that the provisions of this Part have been complied with and that such Final Proposal is consistent with the Preliminary Proposal.

(b) *Clarifications or Modifications.* HUD may request clarification of individual items, additional information, or modifications of the Final Proposal.

(c) *HUD Determination.* HUD shall notify the Owner (and the PHA, if applicable) that the Final Proposal is:

(1) Approved.

(2) Approvable only if specified deficiencies are corrected and that HUD will approve the Final Proposal if it receives within a specified time evidence of such necessary corrections.

(3) Not approved. If a Final Proposal is not approved or if the conditions for approval under paragraph (c)(2) of this section are not met, HUD shall so advise the Owner and may request the preparation of a Final Proposal(s) with respect to the highest ranking Preliminary Proposal(s) not previously selected, or may issue another Invitation for Preliminary Proposals.

(d) *Notification.* The unit of general local government shall be notified by HUD of its final action.

§ 881.211 Owner's acceptance of notification and submission of architect's certification.

(a) *Owner's Acceptance.* Upon receipt by the Owner of the notification of approval of the Final Proposal, the Owner shall return to HUD a copy indicating his acceptance within the time prescribed in such notification (copy to the PHA, if applicable). If the Owner does not accept the notification by the date specified, HUD may rescind the notification and proceed in accordance with § 881.210(c)(3).

(b) *Architect's Certification.* (1) If the services of a registered architect are to be used, HUD will not enter into an Agreement (or, where applicable, an ACC and an Agreement), until after the Owner has submitted to HUD the architect's certification on the prescribed form. Such certification shall be made by the architect responsible for the preparation of the working drawings and specifications.

(2) The architect's certification shall state that, to the best of the architect's knowledge, belief, and professional judgment, (i) the working drawings and specifications are consistent with the approved Final Proposal (including any modifications required by HUD in its review of the Final Proposal), and (ii) the proposed rehabilitation in accordance with these plans, and specifications is permissible under the applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials. This certification shall also cover compliance with the appropriate HUD Minimum Design Standards for Rehabilitation for Residential Properties and other standards, guidelines and criteria applicable pursuant to § 881.111(b).

(3) One copy of the certified working drawings and specifications shall be submitted with the architect's certification to HUD; provided, however, that receipt and retention by HUD of these working drawings and specifications shall not denote or constitute HUD review or approval of such drawings or specifications.

(4) If the Owner fails to submit the certification by the date specified in the notification, HUD shall rescind the notification (and may proceed in accordance with § 881.210(c)(3)) unless it determines that a reasonable extension of time should be granted.

§ 881.212 Annual contributions contract and agreement (private-owner/PHA projects).

(a) *Preparation of ACC.* After receipt of a copy of the accepted notification (and, where required, the architect's certification with the working drawings and specifications), the HUD field office shall prepare the ACC, shown as Appendix III. The ACC shall be transmitted to the PHA for execution and returned to HUD. This transmittal shall advise the PHA that it must simultaneously submit for HUD approval its Initial Estimate of Required Annual Contributions (Preliminary Costs) and an Estimate of Total Required Annual Contributions (see § 881.213).

(b) *Preparation of Agreement.* The Agreement shall be prepared by the HUD field office at the time the ACC is prepared (see § 881.214), and shall conform to the prescribed form shown as Appendix IV. The Agreement shall include all required information and required attachments.

(c) *Execution of ACC and Agreement.* After receipt of the PHA-executed ACC,

accompanied by the Estimates of Required Annual Contributions, HUD shall review the Estimates and, if approved, execute the ACC. HUD shall then transmit a fully executed copy of the ACC to the PHA, together with four copies of the unexecuted Agreement. After execution of the Agreement by the PHA and the Owner, all copies shall be returned by the PHA to HUD for approval. HUD shall return three copies to the PHA, retaining one copy for its records.

§ 881.213 Submission of estimates of required annual contributions (Private-owner/PHA projects).

(a) *Initial Submission.* An allowance may be provided for preliminary costs incurred by the PHA prior to the beginning of the first fiscal year. When the ACC is executed by the PHA, it shall submit an Initial Estimate of Required Annual Contributions (Preliminary Costs) together with an Estimate of Total Required Annual Contributions on the prescribed forms. This submission includes estimates of costs of administration and non-expendable equipment up to the beginning of the first fiscal year.

(b) *First Fiscal Year Submission.* Not earlier than 150 and not later than 90 days prior to the estimated date of the beginning of the first fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) covering the estimated amount required for the first fiscal year for housing assistance payments and for the fee for administration together with an Estimate of Total Required Annual Contributions.

(c) *Subsequent Fiscal Year Submissions.* Not earlier than 150 and not later than 90 days prior to the beginning of each subsequent fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) and an Estimate of Total Required Annual Contributions, with supporting documentation, for any requested changes in the amount of housing assistance payments and the fee for administration.

(d) *Revisions of Estimates.* Any of the above Estimates may be revised to reflect changes in circumstances and available data.

(e) *HUD Approval.* All Estimates of Required Annual Contributions and any revisions thereto submitted by the PHA shall be subject to HUD approval.

§ 881.214 Preparation and execution of agreement (Private-owner and PHA-owner projects).

After receipt of a copy of the accepted notification, (and, where required, the architect's certification and the working drawings and specifications), the HUD field office shall prepare the Agreement in the prescribed form shown as Appendix I. The Agreement shall include all required information and required attachments. HUD shall transmit to the Owner three copies of the unexecuted Agreement. After the Owner executes all copies of the Agreement, he shall return them to HUD. HUD shall execute the Agreement, returning one copy to the Owner and retaining two copies for its records.

§ 881.215 Rehabilitation period.

(a) *Timely Performance of Work.* After execution of the Agreement, the Owner shall promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, and/or completed, HUD (or the PHA with HUD approval, as appropriate) shall have the right to rescind the Agreement, or take other appropriate action.

(b) *Delays.* Although extensions of time may be granted for the reasons specified in the Agreement, no increases in Contract Rents may be granted on that account.

(c) *Changes.* The Owner shall submit for HUD approval any changes from the approved Final Proposal which would materially reduce or alter his obligations or any changes which would alter the design or materially reduce the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior HUD approval, HUD may determine that Contract Rents shall be reduced or that the Owner shall remedy the deficiency as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications except those required by changes in local codes or ordinances made subsequent to execution of the Agreement, and then only if HUD approval is obtained prior to incorporation of any such changes in the project.

(d) *Inspection of HUD-FHA Insured Projects.* For projects financed with HUD-FHA insured mortgages, required HUD inspection procedures shall be followed including compliance with equal opportunity requirements.

(e) *Equal Opportunity Review.* Equal opportunity review may be conducted with any scheduled HUD inspection or at any other time deemed advisable by HUD.

(f) *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed (see § 881.217), the Owner will be required to submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units, pursuant to § 881.107(b), only if he has fully complied with the requirements of that section and of this paragraph.

§ 881.216 Project completion.

(a) *Notification of Completion.* The Owner shall notify HUD (with a copy to the PHA in the case of a Private-Owner/PHA Project) when the work is completed and shall submit to HUD the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of Completion.* Completion of the project shall be evidenced by furnishing HUD with all of the following:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy.

(2) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) The project has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);

(iv) The project has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(v) The project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR Part 35) and that if the property was constructed prior to 1950, each Family upon occupancy will receive 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 and that records showing receipt of such notice by each tenant will be maintained;

(vi) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by HUD in accordance with the Agreement; and

(vii) He has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of his knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, HUD, or the PHA (if applicable), the Owner shall be required to place a sufficient amount in escrow, as determined by HUD, to assure such payments.

(3) If working drawings and specifications for the work were prepared and certified to by a registered architect, a certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the

frequency and thoroughness required by the generally accepted standards of professional care and judgment; and that to the best of his knowledge, belief and professional judgment:

(i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(c) *Review and Inspection.* (1) Within ten working days of the receipt of the evidence of completion, HUD shall review the evidence of completion for compliance with paragraph (b) of this section.

(2) Within the same time period, a HUD representative (accompanied by a PHA representative, if applicable) shall inspect the project in a manner sufficient to enable the inspector to report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection, the project has been completed in accordance with the Agreement and that there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner and the design or inspecting architects. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (e)(1) and (2) of this section.

(d) *Acceptance.* If HUD determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted.

(e) *Acceptance Where Defects or Deficiencies Reported.* If the project is not acceptable under paragraph (d), the following shall apply: (1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of HUD (and the PHA, if applicable), HUD may, upon 30 days notice to the Owner (and the PHA, if applicable) terminate the Contract and/or exercise its other rights thereunder or, if the Contract is with a PHA, cancel its approval of the Contract and require its termination and/or exercise its other rights under the Contract and the ACC.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, HUD shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit HUD to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The Owner (and the PHA, if applicable) shall be notified of HUD's determinations and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

(f) *Notification of Nonacceptance.* If HUD determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner shall be promptly notified of this decision and the reasons.

(g) *Arbitration.* In the event the Owner disputes HUD determinations, he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

(h) *Completion in Stages.* If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§ 881.217 Execution of housing assistance payments contract.

(a) *Time of Execution.* Upon acceptance of the project by the Government pursuant to § 881.216, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) *Unleased Units.* At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in § 881.215(f), and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished to HUD in the case of a Private-Owner/PHA Project.

§ 881.218 Marketing.

(a) *Compliance with Equal Opportunity Requirements.* 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) *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family, in accordance with schedules and criteria established by HUD.

(2) For every family that applies for admission, the Owner and the applicant shall complete and sign the form of application prescribed by HUD, except that if there are no vacant units and the Owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the Owner may advise the applicant that the Owner is not accepting applications for that reason. The Owner shall retain copies of all completed applications together with any related correspondence for three years. For each Family selected for admission, the Owner shall submit one copy of the completed and signed application to the HUD field office (in the case of Private-Owner/PHA Projects, the Owner simultaneously shall send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted Family until after this copy has been received by the HUD field office (or, in the case of Private-Owner/PHA Projects, until the copy has been received by the PHA with a certification by the Owner that he has sent a copy to HUD).

(3) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.

(4) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in conformity with the provisions of this Part.

(5) Records on applicant families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.

(6) In the case of a PHA-Owner project, (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall promptly send the applicant a letter notifying him of the determination and the reasons and that the

applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the letter, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

§ 881.219 Lease requirements.

The Lease shall contain all required provisions listed in paragraph (c) of this this section and none of the prohibited provisions listed in paragraph (c) of this section and shall otherwise conform to the form of Lease included with the Owner's approved Final Proposal.

(a) *Term of Lease.* The term of the Lease shall be for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 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 incorporate 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, or the PHA, if appropriate, 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 services and maintenance: [Here insert the complete list as contained in the approved Final Proposal.]

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.)

§ 881.220 Termination of tenancy.

The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in § 8.81.107(c)(1).

§ 881.221 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 (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times (including prior to initial occupancy and rerenting of any unit) as HUD (or the PHA) 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 (or the PHA) will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

(d) *Units Not Decent, Safe, and Sanitary.* If HUD (or the PHA, as appropriate) 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 (or the PHA) 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. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and HUD (or the PHA) does not have other section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if:

(1) The unit is restored to Decent, Safe, and Sanitary condition;

(2) The Family is willing to and does move back to the restored dwelling unit; and

(3) A deduction is made for the expenses incurred by the Family for both moves.

§ 881.222 Reexamination of Family income, composition, and extent of exceptional medical or other unusual expenses.

Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the 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 as-

sistance payment, all in accordance with schedules and criteria established by HUD.

§ 881.223 Overcrowded and underoccupied units.

If HUD or the PHA, as the case may be, 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. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 881.107(c)(1).

§ 881.224 Adjustment of allowance for utilities and other services.

HUD or the PHA, as the case may be, 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 (or the PHA) determines that an adjustment should be made, HUD (or the PHA) 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.

§ 881.225 Continued family participation.

A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (a) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (b) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit, the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

§ 881.226 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 applicable only to PHA-Owner Projects under the Section 8 Housing Assistance Payments Program.

§ 881.227 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 (or the PHA at the direction of HUD, as appropriate) 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 (or the PHA at the direction of HUD, as appropriate) 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 ACC or the Contract, as appropriate, 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 annual contributions 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 (see §§ 881.105 and 881.106).

§ 881.228 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.

§ 881.229 PHA reporting requirements.

[Reserved]

APPENDIX I

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Agreement To Enter Into Housing Assistance Payments Contract, Substantial Rehabilitation, Private-Owner or PHA-Owner Project

Part I. This agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government") and _____ ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of the Substantial Rehabilitation of certain property, as described in the approved Final Proposal; and

Whereas, the Owner and the Government propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible Lower-Income Families ("Families") to occupy units in said project; and

Whereas, the Owner is also the rehabilitator, or, if the rehabilitator is other than the Owner, the rehabilitator's name is _____.

Now, therefore, the parties hereto agree as follows:

1.1 *Significant Dates; Contents of Agreement.* a. *Time for Completion of Project.* The time for completion of the project (see section 1.2a) is _____ calendar days after the effective date of this Agreement.

b. *Date for Commencement of Work.* The date for commencement of work (see section 1.2b) is _____, 19__.

c. *Contents of Agreement.* This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal, including, among other things, evidence of management capability, and if required: the architect's certification, the Affirmative Fair Housing Marketing Plan, and management program;

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The schedule of completion in stages, if applicable;

Exhibit D: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the Government and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 *Schedule of Completion.* a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit C which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the Government reserves the right to rescind this Agreement or take other appropriate action. The Owner shall report to the Government the date work was commenced and shall thereafter furnish the Government with periodic progress reports (quarterly unless more frequent reporting is required by the Government).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the Government, the time for completion shall be extended to the extent that completion is delayed due to one or more of these

causes. No increase in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 *Rehabilitation Period.* a. *Changes.* The Owner shall submit for Government approval any changes from Exhibit A which would materially reduce or alter his obligations or any changes which would alter the design or materially reduce the quality or amenities of the project. The Government may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior Government approval, the Government may determine that Contract Rents shall be reduced or that the Owner shall remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications except those required by changes in local codes of ordinances made subsequent to execution of the Agreement, and then only if Government approval is obtained prior to incorporation of any such changes in the project.

b. *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify the Government of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the Government of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.6b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

Such pending claims to the knowledge of the Owner or the Government, the Owner shall be required to place a sufficient amount in escrow, as determined by the Government, to assure such payments.

1.4 *Project Completion.* a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidenced by furnishing the Government with all of the following:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy.

(2) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) The project has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(v) The project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR, Part 35) and that if the property was constructed prior to 1950, each Family upon occupancy will receive 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 and that records showing receipt of such notice by each tenant will be maintained;

(vi) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the Government in accordance with Section 1.3a; and

(vii) [1] He has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or the Government, the Owner shall be required to place a sufficient amount in escrow, as determined by the Government, to assure such payments.

(3) [2] A certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. *Review and Inspection.* (1) Within ten working days of the receipt of the evidence of completion, the Government shall review the evidence of completion for compliance with paragraph c of this Section.

(2) Within the same time period, a Government representative shall inspect the project in a manner sufficient to enable the inspector to report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection, the project has been completed in accordance with the Agreement and that there are no observable conditions inconsistent with the evidence of completion, including the certification of the Owner and the design or inspecting architects. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs f (1) and (2) of this Section.

e. *Acceptance.* If the Government determines from the review and inspection that the project had been completed in accordance with the Agreement, the project shall be accepted.

f. *Acceptance Where Defects or Deficiencies Reported.* If the project is not acceptable under paragraph e, the following shall apply:

(1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of the Government, the Government may, upon 30 days notice to the Owner, terminate the Contract and/or exercise its other rights thereunder.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, the Government shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit the Government to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The Owner shall be notified of the Government's determinations, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

g. *Notification of Nonacceptance.* If the Government determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner shall be promptly notified of this decision and the reasons.

h. *Arbitration.* In the event the Owner disputes the Government determinations, he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

i. *Completion in Stages.* If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 *Execution of Housing Assistance Payments Contract.* a. *Time of Execution.* Upon acceptance of the project by the Government pursuant to sections 1.3 and 1.4, the Contract shall be executed first by the Owner and then by the Government.

b. *Completion in Stages.* If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number of types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. *Unleased Units at Time of Execution.* At the time of execution of the Contract, the Government shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The Government shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract.

d. *Contract Rents.* The Contract Rents by unit size, amounts of housing assistance pay-

[1] Strike this paragraph if the project involves fewer than nine Contract units.

[2] Strike this paragraph (3) of Section 1.4c if the services of a registered architect were not utilized.

ments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except as provided in section 1.3a and in paragraph f of this Section (where applicable).

e. *No Changes in Contract.* Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.

f. *Adjustment of Contract Rents to Reflect Actual Cost of Permanent Financing.*[3] (The provisions of this paragraph shall apply if the project is permanently financed prior to project completion; if the permanent financing does not occur until after project completion, the adjustments contemplated by this paragraph f will be made in accordance with the comparable provisions contained in the Contract.) After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum Contract commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.6 *Government Assurance to Owner.* The execution of this Agreement by the Government signifies that the faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract and that funds have been obligated by the Government for such payments.

1.7 *Relocation requirements.*[4] Alternative provisions—incorporate alternative 1 or 2, as applicable.

Alternative 1—For projects which were without site occupants as of the date indicated in this alternative. The owner hereby certifies that the property to be rehabilitated was without occupants as of the date of the Government notification to the Owner requesting the Owner to submit a final Proposal.

Alternative 2—For projects which do not qualify for alternative 1. a. *Owner Compliance with Relocation Act.* The Owner agrees that pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, it undertakes liability for (1) the provision of relocation payments and assistance as prescribed in sections 202, 203, and 204 of the Act; (2) the provision of relocation assistance programs offering the services described in section 205 of the Act; and (3) assuring that within a reasonable period of time prior to displacement, Decent, Safe, and Sanitary replacement dwellings will be available to displaced persons.

b. *Relocation Payments Other than by Owner.* The Government has determined that satisfactory commitments have been made for the funding of relocation payments required by sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as follows:

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[3] Delete this paragraph unless the project is subject to 24 CFR 881.125.

[4] Strike this section in the case of a Private-Owner Project.

c. *Relocation Payments by Owner.* If paragraph b is inapplicable, the following shall apply:

(1) The maximum potential amount of all relocation payments as estimated by the Government is $_____.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the Government for the purpose of meeting relocation payments.

(3) The Owner hereby voluntarily undertakes liability for all relocation payments and agrees that, if the funds in the escrow account shall prove to be insufficient to meet all such relocation payments, he will deposit such additional amounts as the Government determines to be nesessary for such purpose.

(4) When the Government determines that there is no longer any potential liability for relocation payments, any balance in the escrow account shall be paid to the Owner.

(5) The Owner agrees to hold harmless and to idemnify the Government for any costs incurred under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in connection with the relocation of site occupants, and the Owner further agrees that the Government shall have the right to be reimbursed for any such costs by withholding from housing assistance payments payable to the Owner.

Effective date. This Agreement shall be effective as of the date of execution by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in four original counterparts.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

UNITED STATES OF AMERICA, SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: _____

_____
(Official Title)

Date: _____, 19____

Owner: _____

By: _____
(Official Title)

Date: _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

Substantial Rehabilitation, Private-Owner or PHA-Owner Project

PART II. 2.1 Training, Employment, and Contracting Opportunities for Businesses and Lower-Income Persons.[5] a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of $50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

[5] Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are $500,000 or less.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 *Equal Employment Opportunity.*[5] a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of E.O. No. 11246 of September 24, 1965, and by the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by E.O. 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 HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clauses 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 the contractor may be declared ineligible for further contracts in accordance with procedures authorized in E.O. No. 11246 of September 24, 1965, and such other sanctions as 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.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 *Cooperation In Equal Opportunity Compliance Reviews.* The Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood Insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act And Federal Water Pollution Control Act.*[7] In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Air Act") (42 U.S.C. 1857, et seq.), the Federal Water Pollution Control Act, as amended ("Water Act") (33 U.S.C. 1251, et seq.), and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Prevailing Wage Rates.*[8] a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regard-

[5] As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

[7] Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are $100,000 or less.

[8] As used in sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

less of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1)(i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of $10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 *Submittal of Payrolls and Related Reports.* a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 *Disputes Concerning Wage Rates and Classifications of Labor.* a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 *Wage Claims and Adjustments.* In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by

HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this section, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this section.

2.11 *Termination; Debarment; Subcontracts.* a. A breach of the provisions of the foregoing sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR 5.6.

b. The Owner shall insert in any subcontract sections 2.6 (and with respect to section 2.6g(2), copies of 29 CFR 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the resolution of such disputes 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 proceeding under this section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 *Interest Of Members, Officers, Or Employees Of Public Housing Agency, Members Of Local Governing Body, Or Other Public Officials.* No member, officer, or employee of the Public Housing Agency ("PHA"), no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions of responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.14 *Interest Of Member Of Or Delegate To Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.15 *Nonassignability.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the Government.

c. The Owner agrees that the approved rehabilitator has not made, and will not make, except with the prior consent of the rehabilitator's contract, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or rehabilitator in whole or in part, by a party holding ten percent or more of the stock of said Owner by rehabilitator or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or rehabilitator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the project or the rehabilitation contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX II

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

HOUSING ASSISTANCE PAYMENTS CONTRACT

Substantial Rehabilitation Private-Owner or PHA-Owner Project

PART I. This Housing Assistance Payments Contract ("Contract") is entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government"), and _____ ("Owner"), pursuant to the United States Housing Act of 1937 ("Act"), 42 U.S.C. 1347, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3431, et seq.

The parties hereto agree as follows:

1.1 *Significant Dates and other Items; Contents of Contract.* a. *Effective Date of Contract.* The effective date of this Contract is _____, 19__. [This date shall be no earlier than the date of execution by the Government].

b. *Term of Contract Where Relative Cost of Rehabilitation is Less Than 15 Percent of Value.* The term of this Contract (see Section 1.4a, Alternative 1) for any unit shall be _____ years [not to exceed five years], beginning with the effective date of this Contract for such unit.

c. *Term of Contract Where Relative Cost of Rehabilitation Is 15 Percent or More of Value.*

(1) *Initial Term.* The initial term of this Contract for any unit (see Section 1.4a, Alternative 2) shall be _____ years [not to exceed five years], beginning with the effective date of this Contract for such unit.

(2) *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see Section 1.4a) shall be _____ terms of _____ years each [not to exceed five years each].

(3) *Maximum Total Term.* The maximum total term of this Contract for any unit, including renewals (see Section 1.4a) shall be _____ years. [Insert number as authorized by the Government pursuant to 24 CFR 881.103, but in no event more than 20 years, or, in the case of a project owned by, or financed by a loan or a loan guarantee from, a State or local agency, the number, not to exceed 40, which will provide a term ending with the scheduled maturity date for the last payment under such financing.]

d. *Fiscal Year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ [insert March 31, June 30, September 30 or December 31, as determined by the Government].

e. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.5a) is $_____ per annum.

f. *Minimum Percentage of Occupancy by Very Low-Income Families.* In the initial renting of the Contract Units, the Owner shall lease at least _____ percent [insert 30, or lower number if authorized by the Government in accordance with 24 CFR 881.117] to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to achieve and maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

g. *Contents of Contract.* This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B. The project description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's warranties.* a. *Legal Capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of Work.* The Owner warrants that the project as described in Exhibit B is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of this Contract. The Owner and the Government agree that the continuation of this Contract shall be subject to the conditions set forth in Section 1.4f of the Agreement.

1.3 *Families To Be Housed; Government Assistance.* a. *Families To Be Housed.* The Contract Units are to be leased by the Owner to eligible Lower-Income Families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *Government Assistance.* (1) The Government hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the Government upon receipt of funds from the Government for that purpose.

1.4 *Term of Contract; Fiscal Year.* a. *Term of Contract* [Alternative provisions—incorporate alternative 1 or 2].

Alternative 1—Where HUD has determined that the Cost of Rehabilitation Is Less Than 15 Percent of Value. The term of this Contract for any unit shall be as stated in Section 1.1b, with no option for renewal in either party. If the project is completed in stages, this term shall be separately related to the units in each stage; Provided, however, that the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed said Contract term plus two years.

Alternative 2—Where HUD Has Determined that the Cost of Rehabilitation Is 15 Percent or More of Value. The initial term of this Contract for any unit shall be as stated in Section 1.1c(1). This Contract may be renewed at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c(2), provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in Section 1.1c(3). Renewal shall be automatic unless the Owner notifies the Government, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is completed in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage; Provided, however, that the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1c(3), plus two years.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1d; Provided, however, that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.5a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Maximum Housing Assistance Commitment; Project Account.* a. *Maximum Housing Assistance Commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other Contract between the Government and the Owner, the Government shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1e; Provided, however, that this amount shall be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provisions of this Contract.

b. *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 Government consistent with its responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum Contract commitment per year exceeds amounts paid under the Contract for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family Incomes (see Section 1.8). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.

(2) Whenever the Government approved estimate of the required Annual Contribution exceeds the maximum contract commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum Contract commitment, the Government 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 reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

1.6 *Housing Assistance Payments to Owners.* a. *General.* (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family Income, Family composition, or extent of exceptional medical or other unusual expenses, in accordance with the Government-established schedules and criteria; or by reason of adjustment by the Government of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification of such change to the Family.

b. *Vacancies During Rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.3b of the Agreement, (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, requesting the Public Housing Agency ("PHA") and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to the Government.

c. *Vacancies After Rent-up.* (1) If a 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 in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.9b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the Government of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner evicts a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported by a a certification that (i) he gave such Family a written notice of the proposed eviction stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

d. *Limitation on Payments for Vacant Units.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.9b of this Contract).

e. *Government Not Obligated for Family Rent.* The Government has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.9b of this Contract. The financial obligation of the Government is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. *Owner's Monthly Requests for Payments.* (1) The Owner shall submit monthly requests to the Government for housing assist-

ance payments. Each such request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where appropriate, the amount to be paid the Family in accordance with Section 1.3b(2)); and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed has been previously claimed or paid.

(3) If the Owner has received an excessive payment, the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

g.[1] *Recoupment of Savings in Financing Cost.* (1) In the event that the interim financing is continued beyond one year from the effective date of the Contract and the interest cost of the interim financing for any period of three months, after such first year, is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an amount reflecting the savings in financing cost, computed in accordance with paragraph g(2) of this Section, shall be credited by the Government to the Project Account, and withheld from housing assistance payments to the Owner. If during the course of the same year there is any period of three months in which the financing cost is greater than the anticipated debt service under the permanent financing, an adjustment shall be made so that only the net amount of savings in financing cost for the year is credited by the Government to the Project Account and withheld from housing assistance payments to the Owner as aforesaid (no increased payments shall be made to the Owner on account of any net excess for the year of actual interim financing cost over the anticipated debt service under the permanent financing). Nothing in this paragraph g shall be construed as requiring a reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with Section 1.8.

(2) The computation and recoupment under this paragraph g may be made on an annual or on a quarterly or other periodic basis, but in any event no later than as of the end of each Fiscal Year; Provided, however, that if recoupment is to be made less often than quarterly, the amounts of recoupment shall be computed on at least a quarterly basis and the funds deposited in a special account from which withdrawals may be made only with the authorization of HUD. The manner of computing the amount of recoupment shall be as follows:

(i) Determine the amount by which the interest cost for the interim financing for the period in question is less than the anticipated debt service under the permanent financing on which the Contract Rents were based;

(ii) Determine what percentage the amount found under paragraph g(2)(i) of this Section is of the aggregate Contract Rents for all Contract Units for the period in question;

(iii) Apply the percentage found in paragraph g(2)(ii) of this Section to the aggregate Contract Rents for those Contract Units which are included in the Owner's claim(s) for housing assistance payments for this period in question; and

(iv) The amount found in paragraph g(2)(iii) of this Section shall be credited to the Project Account and withheld from the next housing assistance payment or payments to the Owner.

1.7 *Maintenance, Operation and Inspection.* a. *Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the Government determines that the Owner is not meeting any of these obligations, the Government shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

b. *Inspection.* (1) 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 the Government, 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.

(2) The Government shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy and rerenting of any unit) as may 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. The Government shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

c. *Units Not Decent, Safe, and Sanitary.* If the Government 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, the Government 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. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the Government does not have other section 8 funds for such purposes, the Government may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The Government shall promptly notify the Family of any such abatement.

e. *Overcrowded and Underoccupied Units.* If the Government determines that a Contract Unit 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. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the Government will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.6c(1).

1.8 *Rent adjustments.* a. *Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section, up to the maximum amount authorized under Section 1.5a of this Contract.

b. *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by the Government 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 the Government. Contract Rents may be directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special Additional Adjustments.* Special additional adjustments may be granted, when approved by the Government, 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., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall Limitation.* Notwithstanding any other provisions of this Contract, 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 the Government establishing the effective date of the adjustment.

e. *Incorporation of Rent Adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit establishing the effective date of the adjustment.

f. [2] *Adjustment to Reflect Actual Cost of Permanent Financing.* This paragraph f

[1] Delete this paragraph unless the project is subject to 24 CFR 881.125.

[2] Delete this paragraph unless the project is subject to 24 CFR 881.125.

shall apply if the project is not permanently financed until after the effective date of the Contract. After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the Contract Rents currently in effect shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum Contract commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.9 *Marketing and Leasing Of Units.* a. *Compliance with Equal Opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. *Security and Utility Deposits.* (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local law, 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 the amount owed 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.

(2) 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.

(3) 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.

c. *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. (See also Section 1.1f.)

(2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. *Rent Redetermination after Adjustment in Allowance for Utilities and Other Services.* In the event that the Owner is notified of a Government determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. *Processing of Applications and Complaints.* The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Government requirements and shall maintain records and furnish such copies or other information as may be required by the Government.

f. *Government Review; Incorrect Payments.* In making housing assistance payments to Owners, the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.10 *Termination of Tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in Section 1.6c.

1.11 *Reduction of Number of Contract Units For Failure To Lease To Eligible Families.* a. *After First Year Of Contract.* If at any time, beginning six months after the effective date of this 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 Families, the Government 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 Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

b. *At End of Initial and Each Renewal Term.* At the end of the initial term of the Contract and of each renewal term, the Government 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 Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

c. *Restoration of Units.* The Government 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 the Government 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 this Contract and if annual contributions contract authority is available; and the Government will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance (see Section 1.5).

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Owner _____

By _____

(Official title)

Date _____, 19__

United States of America, Secretary of Housing and Urban Development.

By _____

(Official title)

Date _____, 19__

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit A-1.

Effective Date. The effective date of this Contract is _____, 19_____ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____

By _____

(Official title)

Date _____, 19_____

United States of America, Secretary of Housing and Urban Development.

By _____

(Official title)

Date _____, 19_____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

Effective Date. The effective date of this Contract is _____, 19__ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____

By _____

(Official title)

Date _____, 19_____

United States of America, Secretary of Housing and Urban Development.

By _____

(Official title)

Date _____, 19_____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

Effective Date. The effective date of this Contract is _____, 19__ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____

By _____

(Official title)

Date _____, 19_____

United States of America, Secretary of Housing and Urban Development.

By _____

(Official title)

Date _____, 19_____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

HOUSING ASSISTANCE PAYMENTS CONTRACT, SUBSTANTIAL REHABILITATION; PRIVATE-OWNER OR PHA-OWNER PROJECT

Part II

2.1 *Nondiscrimination In Housing.* a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and E.O. 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, § 1.1, et seq., issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government and the said Department, either of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance herewith by the Owner.

2.2 *Training, Employment, and Contracting Opportunities for Businesses and Lower-Income Persons.*[3] a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20 (b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of $50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS.

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.3 *Cooperation in Equal Opportunity Compliance Reviews.* The Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood Insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.*[4] In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Air Act"), (42 U.S.C. 1857, et seq.), the Federal Water Pollution Control Act, as amended ("Water Act"), (33 U.S.C. 1251, et seq.), and E.O. 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Reports and Access to Premises and Records.* a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the Government.

b. The Owner shall permit the Government or any of its duly authorized representatives

[3] Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are $500,000 or less.

[4] Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are $100,000 or less.

to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests for housing assistance payments.

2.7 *Default By The Owner.* a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

b. Upon a determination by the Government that a default has occurred, the Government shall notify the Owner of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the Government, the Government shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance.

c. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.8 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the resolution of such disputes 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 proceeding under this section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.9 *Interest Of Members, Officers, Or Employees Of PHA, Members Of Local Governing Body Or Other Public Officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.10 *Interest Of Member Of Or Delegate To Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.11 *Assignment, Sale, Or Foreclosure.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract or the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

d. In the event of foreclosure, including foreclosure by the Government, and in the event of assignment or sale agreed to by the Government or made to the Government, housing assistance payments shall continue in accordance with the terms of the Contract.

[If the project is subject to 24 CFR, § 881.-125, paragraph d above shall be stricken and the following shall be used instead:

d. In the event of foreclosure, or assignment or sale to the financing agency in lieu of foreclosure, or in the event of assignment or sale agreed to by the financing agency and approved by the Government (which approval shall not be unreasonably delayed or withheld), housing assistance payments shall continue in accordance with the terms of the Contract.]

APPENDIX III

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT #_____

This Annual Contributions Contract (ACC) is entered into on the ____ day of _____, 19__, (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437, et seq.), herein called the "Act", and the Department of Housing and Urban Development Act (42 U.S.C. 3531), and _____ (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or Projects.* The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in Section 2.1) pursuant to section 8 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with Owners (as defined in Section 2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2 *Part I and Part II of this Annual Contributions Contract.* (a) Certain provisions of the ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3. *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

0.4. *Schedule of Projects.* Attached to this Master Section 8 ACC, as Attachment A, is a list identifying each ACC Part I and ACC Part I amendment by project number, date, and ACC List number and date.

PHA: _____
By: _____
Date: _____
The Government
By: _____
Date: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, ANNUAL CONTRIBUTIONS CONTRACT

Part I

SUBSTANTIAL REHABILITATION
PROJECT NO. _____

Effective Date _____

[Date of execution by the Government of this ACC Part I]

ACC List Number and Date _____

1.1. *The Project.* The PHA proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to substantially rehabilitated dwelling units pursuant to an Agreement to Enter into Housing Assistance Payments Contract ("Agreement") executed prior to the commencement of rehabilitation. The numbers and sizes of units will be as follows:

Size of unit	*Number of Units*

The PHA shall enter into an Agreement and Contract in accordance with the num-

bers and sizes of units specified above. The PHA shall not enter into any Agreement or Contract or take any other action which will result in a claim for an Annual Contribution in respect to the Project in excess of the total amount or any sublimitation stated in Section 1.4(a).

1.2. *Authorization of Actions by PHA.* In order to carry out the Project, the PHA is authorized to (a) enter into an Agreement, (b) enter into a Contract, (c) make housing assistance payments on behalf of Families, and (d) take all other necessary actions, all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PHA nor the Government shall assume any obligation beyond that provided in the Government-approved Agreement and Contract.

1.3 *Term of Contract and ACC,* (a) *Term of Contract.* [Alternative provisions—incorporate alternative 1 or 2, as applicable.]

Alternative 1—Where HUD Has Determined that the Cost of Rehabilitation Is Less Than 15 Percent of Value. The total Contract term for any unit shall not exceed ____ years [not to exceed five years]. If the Project is completed in stages, the total Contract term for the units in all stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (a), plus two years.

Alternative 2—Where HUD Has Determined that the Cost of Rehabilitation Is 15 Percent or More of Value. The total Contract term for any unit, including all renewals, shall not exceed ____ years. [Insert number as authorized by the Government pursuant to 24 CFR 881.109, but in no event more than 20 years, or, in the case of a project owned by, or financed by a loan or loan guarantee from, a State or local agency, the number, not to exceed 40, which will provide a term ending with the scheduled maturity date for the last payment under such financing.] If the Project is completed in stages, the total Contract term for the units in all stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (a), plus 2 years.

(b) *Term of ACC.* This ACC shall remain in effect so long as the Contract is in effect but in no event shall the term of the ACC exceed ____ years from the beginning of the first Fiscal Year. [Insert number specified in the first sentence of paragraph (a) of this Section, plus two years.]

1.4 *Annual Contributions.* (a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PHA, the Government shall not be obligated to make any Annual Contribution or any other payment with respect to any Fiscal Year in excess of:

(1) $_____ per year for housing assistance payments under the Contract; or

(2) $_____ per year for other Project Expenditures; or

(3) A total of $_____ per year for all Project Expenditures in respect to the Project (Maximum ACC Commitment);

Provided, however, that these amounts shall be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents under the Contract or pursuant to any other provision of this ACC or the Contract.

(b) Subject to the maximum dollar limitations in paragraph (a) of this Section, the Government shall pay for each Fiscal Year an Annual Contribution to the PHA in respect to the Project in an amount equal to the sum of the following (subject to reduction by the amount of any Project Receipts other than Annual Contributions, which Receipts shall be available for Project Expenditures):

(1) The amount of housing assistance payments payable during each Fiscal Year (see Section 1.5) by the PHA pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(3) The allowance, in the amount approved by the Government, for the regular costs of administration, including costs of Government-required audits of Owners and the PHA.

(c) 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 Government consistent with its responsibilities under section 8(c)(6) of the Act, out of amounts by which the Maximum ACC Commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum Annual Contribution otherwise payable for any Fiscal Year may be increased by such amount, if any, as may be required for increases reflected in the estimate of required Annual Contribution applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11. Any amount remaining in said account after payment of the last Annual Contribution with respect to the Project shall be applied by the Government in accordance with law.

(2) Whenever the Government approved estimate of the required Annual Contribution exceeds the Maximum ACC Commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such Maximum ACC Commitment, the Government 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 reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

(d) The Government will make periodic payments on account of each Annual Contribution upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contract as such provisions apply respectively to (i) units under lease by Families and (ii) units not under lease by Families; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5. *Fiscal Year.* The Fiscal Year for the Project shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the Maximum ACC Commitment may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6. *Periodic Adjustment of Contract Rents.* The Contract may provide for periodic adjustments in the Contract Rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments up to the maximum amount authorized for housing assistance payments under Section 1.4(a) of this ACC.

1.7 *Affirmative Fair Housing Marketing Regulation.* The PHA shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation (subject to any exceptions therein) including the submission for Government approval of an Affirmative Fair Housing Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to said Regulation.

1.8 *Expeditious Carrying Out of Project.* The PHA shall proceed expeditiously with the Project. If the PHA fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government, by notice to the PHA, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the PHA or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.9 *Responsibility for Administration of Contract.* The PHA is primarily responsible for administration of the Contract, subject to review and audit by the Government.

PHA: _____
By: _____
Date: _____
The Government
By: _____
Date: _____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

TERMS AND CONDITIONS, CONSTITUTING PART II OF AN ANNUAL CONTRIBUTIONS CONTRACT BETWEEN PUBLIC HOUSING AGENCY AND THE UNITED STATES OF AMERICA

2.1. *Definitions.* (a) "Families" means lower-income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.

(b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age or are under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined under regulations of the Secretary of Housing and Urban Development ("Secretary") to be a person essential to their care or well being.

(c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster

declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(d) "Lower-Income Families" means Families whose Incomes do not exceed 80 percent of the median Income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish Income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family Incomes, or other factors.

(e) "Very Low-Income Families" means Families whose Incomes do not exceed 50 percent of the median Income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.

(g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.

(h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts, if any, accruing to the PHA from, out of, or in connection with such Project.

(j) "Project Expenditures" with respect to each Project means all costs allowable under Section 1.4(b), Part I of this ACC, with respect to such Project.

(k) "Substantial Default" means the occurrence of any of the events listed in Section 2.16.

2.2. *Lower-Income Housing Use; Compliance With Act and Regulations.* The PHA shall use the Annual Contribution solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3. *Eligibility and Amount of Housing Assistance Payments.* (a) The PHA shall comply with the Income limits established by the Government, and with the requirements of the Government pursuant to section 8(c)(7) of the Act that at least 30 percent of the Families assisted in all its Projects under its Master Section 8 ACC shall be Very Low-Income Families.

(b) The PHA shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amounts of housing assistance payments made on behalf of Families.

(c) The PHA shall make or cause to be made periodic reexaminations of the Income, composition, and extent of exceptional medical or other unusual expenses of Families for whom housing assistance payments are being made, for the purpose of confirming or adjusting, in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.

(d) The PHA 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 unit on ground of changes of general applicability. If the PHA determines that an adjustment should be made, the PHA shall prescribe the amount of the adjustment and notify the Owner accordingly, and the PHA shall cause the Owner to make a corresponding adjustment in the amount of rent to be paid by the affected Family and the amount of housing assistance payment.

(e) Prior to the approval of eligibility of a Family by the PHA or the Owner, as the case may be, and thereafter on the date established for each reexamination of the status of such Family, the PHA or the Owner, as the case may be, shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for a determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4. *Inspections.* (a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling units and related facilities in Decent, Safe, and Sanitary condition.

(b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families, and thereafter at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that the agreed-to services are being furnished.

2.5. *Nondiscrimination in Housing.* (a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and E.O. 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, §1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other.]

(b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations issued pursuant thereto.

(c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use of occupancy thereof, nor deny to any Family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

2.6 *Equal Employment Opportunity.* (a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, 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.

(b) (1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA setting forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of E.O. No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by E.O. No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the contractor'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 the contractor may be declared ineligible for further contracts in accordance with procedures authorized in E.O. No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in E.O. No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(G) The contractor will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (G) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of E.O. No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(3) The PHA further agrees that it will refrain from entering into any contract or contract modification subject to E.O. No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.7. *Training, Employment, and Contracting Opportunities for Businesses and Lower Income Persons.* (a) The project assisted under this ACC is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

(b) Notwithstanding any other provision of this ACC, the PHA shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20 (b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

(c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR 135.135.

(d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.8. *Cooperation In Equal Opportunity Compliance Reviews.* The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.9. *Clean Air Act and Federal Water Pollution Control Act.* The PHA shall incorporate or cause to be incorporated, into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and E.O. 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.10. *Labor Standards.* The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.11. *Estimates of Required Annual Contribution.* The PHA shall from time to time submit to the Government estimates of required annual contribution at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

2.12. *Insurance and Fidelity Bond Coverage.* For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project, the PHA shall carry adequate (a) comprehensive general liability insurance, (b) workmen's compensation coverage (statutory or voluntary), (c) automobile liability insurance against property damage and bodily injury (owned and nonowned), and (d) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

2.13. *Books of Account and Records; Reports.* (a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.

(b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA, except as authorized or approved by the Government.

(c) The PHA shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data all as may reasonably be required from time to time by the Government.

(d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

PHA AND GOVERNMENT ACCESS TO PREMISES AND OWNER'S RECORDS

(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.

(2) The Owner shall permit the PHA or the Government or any of their duly authorized representatives, to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests to the PHA for housing assistance payments.

(f) The PHA shall be responsible for engaging and paying the auditor for the making of audits as required by the Government, but the PHA shall be compensated under this ACC for the cost of such audits.

2.14. *General Depositary Agreement and General Fund.* (a) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depositary Agreement," in the form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depositary by the PHA. Immediatley upon the execution of any General Depositary Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depositary Agreement shall be terminated except after 30 days notice to the Government.

(b) All monies received by or held for account of the PHA in connection with the Projects shall constitute the General Fund.

(c) The PHA shall, except as otherwise provided in this ACC, deposit promptly with such bank or banks, under the terms of the General Depositary Agreement, all monies constituting the General Fund.

(d) The PHA may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA stating in proper detail the purpose for which such withdrawal is made.

(e) If the PHA (1) in the determination of the Government, is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material

fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to require any bank or other depositary which holds any monies of the General Fund, to refuse to permit any withdrawals of such monies; Provided, however, that upon the curing of such Default the Government shall promptly rescind such requirement.

2.15. *Pooling of Funds under Special Conditions and Revolving Fund.* (a) The PHA may deposit under the terms of the General Depositary Agreement monies received or held by the PHA in connection with any other housing project developed or operated by the PHA pursuant to the provisions of any contract for annual contributions, administration, or lease between the PHA and the Government.

(b) The PHA may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositaries of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the PHA operates other projects or enterprises in which the Government has no financial interest, it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depositary Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositaries of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depositary Agreement.

(e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16 *Defaults by PHA and/or Owner.* (a) *Rights of Owner if PHA Defaults under Agreement or Contract.* (The provisions of this paragraph (a) shall not apply to any Existing Housing Project.)

(1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

(2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. If the Owner and the assignees are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a) (1) or (a) (2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take the actions authorized in paragraph (a) (1) or (a) (2) to carry out the obligations of the PHA to the Owner, and (iii) proceed against the Government by suit at law or in equity.

(5) The provisions of paragraphs (a) (1), (3) and (4) of this Section shall be included in the Agreement and the provisions of paragraphs (a) (2), (3) and (4) of this Section shall be included in the Contract.

(b) *Rights of Government if PHA Defaults Under ACC, Agreement, or Contract.* (1) If the PHA defaults in the observance or performance of the provisions of section 2.4; fails to comply with its obligations under any duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.6, 2.7 or 2.8; defaults in the performance or observance of any other term, covenant, or condition of this ACC or of any term, covenant, or condition of any Contract or Agreement; fails, in the event of any default by the Owner, to enforce its rights under the Agreement or Contract by way of action to achieve compliance to the satisfaction of the Government or to terminate the Agreement or Contract in whole or in part, as directed by the Government; or fails to comply with the applicable provisions of the Act and all regulations issued pursuant thereto; the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests under the Agreement or Contract, including any funds, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC and of such Contracts until reassigned to the PHA.

(2) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(b) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements; or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) *Rights of PHA and Government if Owner Defaults under Contract. (New Construction and Substantial Rehabilitation Projects.* For New Construction and Substantial Rehabilitation projects, the Contract shall contain the following provisions:

a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provisions of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government.

c. (The provisions of this paragraph c shall apply only if the PHA is the lender.) Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of his obligations under the Contract, the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payments and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this Section, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with Section 2.16(b) of the ACC.

(d) *Rights of PHA if Owner Defaults under Contract (Existing Housing Projects).* For Existing Housing projects, the Contract shall contain the following provisions:

a. A default by the Owner under this Contract shall result if:

(1) The owner has violated or failed to comply with any provisions of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement

of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government.

2.17. *Remedies Not Exclusive and Non-Waiver of Remedies.* The availability of any remedy provided for in this ACC or in the Contract shall not preclude the exercise of any other remedy under this ACC or the Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.18. *Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.* (a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employees of the PHA, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection; Provided, however, that any such present member, office, or employee of the PHA shall not participate in any action by the PHA relating to such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or any proceeds or benefits arising therefrom."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2.18 shall not be applicable to the General Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19. *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise therefrom.

APPENDIX IV

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT SUBSTANTIAL REHABILITATION PRIVATE-OWNER PHA PROJECT

PART I. This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the _____ ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) ("Act"), at section 1437a(6), and _____ ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of the substantial rehabilitation of certain property, as described in the approved Final Proposal; and

Whereas, the Owner and the PHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible Lower-Income Families ("Families") to occupy units in said project; and

Whereas, the PHA has entered into an Annual Contributions Contract dated _____, 19__, with the United States of America acting through the Department of Housing and Urban Development ("Government") with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments; and

Whereas, the Owner is also the rehabilitator, or, if the rehabilitator is other than the Owner, the rehabilitator's name is _____.

Now therefore, the parties hereto agree as follows:

1.1 *Significant Dates; Contents of Agreement.* a. *Time for Completion of Project.* The time for completion of the project (see Section 1.2a) is _____ calendar days after the effective date of this Agreement.

b. *Date for Commencement of Work.* The date for commencement of work (see Section 1.2b) is _____, 19__.

c. *Contents of Agreement.* This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal including, among other things, evidence of management capability and, if required: the architect's certification, the Affirmative Fair Housing Marketing Plan, and management program;

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The Annual Contributions Contract;

Exhibit D: The schedule of completion in stages, if applicable;

Exhibit E: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the PHA and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 *Schedule of Completion.* a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit D which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the PHA reserves the right, subject to Government approval, to rescind this Agreement or take other appropriate action. The Owner shall report to the PHA the date work was commenced and shall thereafter furnish the PHA with periodic progress reports (quarterly unless more frequent reporting is required by the PHA).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the PHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increases in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 *Rehabilitation Period.* a. *Changes.* The Owner shall submit for PHA and Government approval any changes from Exhibit A which would materially reduce or alter his obligations or any changes which would alter the design or materially reduce the quality or amenities of the project. Approval of such changes may be conditioned on a reduction of Contract Rents. If such changes are made without prior approval by the PHA and the Government, the Owner may be required to reduce the Contract Rents or remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications except those required by changes in local codes or ordinances made subsequent to execution of the Agreement, and then only if Government approval is obtained prior to incorporation of any such changes in the project.

b. *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify the PHA of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the PHA of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.7b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

1.4 *Project Completion.* a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government, with a copy to

the PHA, when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidenced by furnishing the Government with all of the following:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy.

(2) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) The project has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(v) The project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR Part 35) and that if the property was constructed prior to 1950, each Family upon occupancy will receive 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 and that records showing receipt of such notice by each tenant will be maintained;

(vi) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the PHA and the Government in accordance with Section 1.3a; and

(vii) [1] He has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or the PHA or the Government, the Owner shall be required to place a sufficient amount in escrow, as determined by the Government, to assure such payments.

(3) [2] A certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. *Review and Inspection.* (1) Within ten working days of the receipt of the evidence of completion, the Government shall review the evidence of completion for compliance with paragraph c of this section.

(2) Within the same time period, a Government representative accompanied by a PHA representative shall inspect the project in a manner sufficient to enable the inspector to report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection, the project has been completed in accordance with the Agreement and that there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner and the design or inspecting architects. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs f(1) and (2) of this Section.

e. *Acceptance.* If the Government determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted.

f. *Acceptance Where Defects or Deficiencies Reported.* If the project is not acceptable under paragraph e, the following shall apply:

(1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of the Government and the PHA, the Government may, upon 30 days notice to the Owner and the PHA, cancel its approval of the Contract and require its termination and/or exercise its other rights under the Contract and the ACC.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, the Government shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit the Government to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The Owner and the PHA shall be notified of the Government's determinations, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

g. *Notification of Nonacceptance.* If the Government determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner shall be promptly notified of this decision and the reasons.

h. *Arbitration.* In the event the Owner disputes the Government determinations, he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

1. *Completion in Stages.* If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 *Execution of Housing Assistance Payments Contract.* a. *Time of Execution.* Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed by the Owner and the PHA and shall then be approved by the Government.

b. *Completion in Stages.* If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the PHA and approved by the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. *Unleased Units at Time of Execution.* At the time of execution of the Contract, the PHA shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The PHA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination of his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished to the Government.

d. *Contract Rents.* The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except as provided in Section 1.3a and in paragraph f of this Section (where applicable).

e. *No changes in Contract.* Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.

f. [3] *Adjustment of Contract Rents to Reflect Actual Cost of Permanent Financing.* (The provisions of this paragraph shall apply if the project is permanently financed prior to project completion; if the permanent financing does not occur until after project completion, the adjustments contemplated by paragraph f will be made in accordance with the comparable provisions contained in the Contract.) After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum ACC commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.6 *Government Assurance To Owner.* The approval of this Agreement by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been ob-

[1] Strike this paragraph if the project involves fewer than nine Contract units.

[2] Strike this paragraph (3) of Section 1.4c if the services of a registered architect were not utilized.

[3] Delete this paragraph unless the project is subject to 24 CFR 891.125.

ligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract. The Government and the PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder for housing assistance payments except as authorized in the ACC and the Contract.

1.7 *Authority of the PHA.* The PHA warrants that it is a "public housing agency" as defined in section 3(6) of the Act and that it is in fact and in law authorized to execute this Agreement.

Effective Date. This Agreement shall be effective as of the date of approval by the Government.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Approved: United States of America, Secretary of Housing and Urban Development.

By _____

_____

(Official title)

Date _____, 19____

PHA _____

By _____

_____

(Official title)

Date _____, 19____

Owner _____

By _____

_____

(Official title)

Date _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT SUBSTANTIAL REHABILITATION PRIVATE-OWNER/PHA PROJECT

Part II

2.1 *Training, Employment, And Contracting Opportunities For Businesses And Lower-Income Persons.*[4] a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of $50,000 cost, the following clause:

Employment of Project Area Residents and Contractors

A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 *Equal Employment Opportunity.*[5] a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising, lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of E. O. No. 11246 of September 24,

[4] Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are $500,000 or less.

[5] As used in section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by E.O. 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 HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clauses 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 the contractor may be declared ineligible for further contracts in accordance with procedures authorized in E.O. No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in E.O. No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of E.O. No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to E.O. No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 *Cooperation In Equal Opportunity Compliance Reviews.* The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood Insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its developement or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.*[6] In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq. the Federal Water-Pollution Control Act, as amended ("Water Act") (33 U.S.C. 1251, et seq.), and E.O. 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Prevailing Wage Rates.*[7] a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) im-

[6] Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are $100,000 or less.

[7] As used in sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

mediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of $10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and the will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 *Submittal Of Payrolls And Related Reports.* a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 *Disputes Concerning Wage Rates and Classifications of Labor.* a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 *Wage Claims And Adjustments.* In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 *Contract Work Hours And Safety Standards Act—Overtime Compensation.* a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidate damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liquidity of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 *Termination; Debarment; Subcontracts.* a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR Section 5.6.

b. The Owner shall insert in any subcontracts Sections 2.6 (and with respect to Section 2.6g(2), copies of 29 CFR 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these Sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 *Failure Or Inability Of PHA To Comply With Agreement.* The following provisions of the ACC are hereby made a part of this Agreement:

a. *Rights of Owner if PHA Defaults Under Agreement or Contract.* (1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

* * * * *

(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 3.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. If the Owner and the assignees are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after reasonable notice to the PHA, make a determination whether a Substantial Default exists under paragraph (a)(1) or

(a) (2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take the actions authorized in paragraph (a) (1) or (a) (2) to carry out the obligations of the PHA to the Owner, and (iii) proceed against the Government by suit at law or in equity.

2.13 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals 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 Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.14 *Interest of Members, Officers, Or Employees Of PHA, Members Of Local Governing Body, Or Other Public Officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.15 *Interest Of Member Of Or Delegate To Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.16 *Nonassignability.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the PHA and the Government.

c. The Owner agrees that the approved rehabilitator has not made and will not make, except with the prior consent of the PHA and the Government, any assignment or transfer in any form of the rehabilitator's contract, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or rehabilitator in whole or in part, by a party holding ten percent or more of the stock of said Owner or rehabilitator, or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or rehabilitator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the project or the rehabilitation contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX V

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Housing Assistance Payments Contract

Substantial Rehabilitation

Private-Owner/PHA Project

Part I

This Housing Assistance Payments Contract ("Contract") is entered into by and between the _____ ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, (42 U.S.C. 1437, et seq.) ("Act"), at section 1437a(6), and _____ ("Owner"), and approved by the United States of America acting through the Department of Housing and Urban Development ("Government"), pursuant to the Act and the Department of Housing and Urban Development Act, (42 U.S.C. 3531, et seq.).

The parties hereto agree as follows:

1.1 *Significant Dates and Other Items; Contents of Contract.* a. *Effective Date of Contract.* The effective date of this Contract is _____, 19___ [This date shall be no earlier than the date approved by the Government.]

b. *Term of Contract Where Relative Cost of Rehabilitation Is Less Than 15 Percent of Value.* The term of this Contract for any unit (see Section 1.4a, Alternative 1) shall be ____ years [not to exceed five years], beginning with the effective date of this Contract for such unit.

c. *Term of Contract Where Relative Cost of Rehabilitation Is 15 Percent or More of Value.* (1) *Initial Term.* The initial term of this Contract for any unit (see Section 1.4a, Alternative 2) shall be ____ years [not to exceed five years], beginning with the effective date of this Contract for such unit.

(2) *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see Section 1.4a) shall be ____ terms of ____ years each [not to exceed five years each].

(3) *Maximum Total Term.* The maximum total term of this Contract for any unit, including renewals (see Section 1.4a) shall be ____ years. [Insert number as authorized by the Government pursuant to 24 CFR 881.109, but in no event more than 20 years, or, in the case of a project owned by, or financed by a loan or a loan guarantee from, a State or local agency, the number, not to exceed 40, which will provide a term ending with the scheduled maturity date for the last payment under such financing.]

d. *Fiscal Year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ _____ [insert March 31, June 30, September 30, December 31, as determined by the Government].

e. *Annual Contributions Contract.* The Annual Contributions Contract applicable to this Contract ("ACC") (see Section 1.5a) is the ACC dated _____ with respect to Project No. _____.

f. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.6a) is $_____ per annum. [Enter amount specified in the ACC for housing assistance payments].

g. *Minimum Percentage of Occupancy by Very Low-Income Families.* In the initial renting of the Contract Units, the Owner shall lease at least ____ percent [insert 30, or lower number if authorized by the Government in accordance with 24 CFR 881.117] to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to achieve and maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

h. *Contents of Contract.* This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B: The project description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's Warranties.* a. *Legal Capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of Work.* The Owner warrants that the project as described in Exhibit B is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of this Contract. The Owner and the PHA agree that the continuation of this Contract shall be subject to the conditions set forth in Section 1.4f of the Agreement.

1.3 *Families To Be Housed; PHA Assistance.* a. *Families To Be Housed.* The Contract Units are to be leased by the Owner to eligible Lower-Income Families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *PHA Assistance.* (1) The PHA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the PHA upon receipt of funds from the PHA for that purpose.

1.4 *Term of Contract; Fiscal Year.* a. *Term of Contract.* [Alternative provisions—incorporate alternative 1 or 2.]

Alternative 1—Where HUD has Determined that the Cost of Rehabilitation Is Less Than 15 Percent of Value. The term of this Contract for any unit shall be as stated in Section 1.1b, with no option for renewal in either party. If the project is completed in stages, this term shall be separately related to the units in each stage; Provided, however, that the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed said Contract term, plus two years.

Alternative 2—Where HUD Has Determined that the Cost of Rehabilitation Is 15 Percent or More of Value. The initial term of this Contract for any unit shall be as stated in Section 1.1c(1). This Contract may be renewed at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c(2), provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in Section 1.1c(3). Renewal shall be automatic unless the Owner notifies the PHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is completed in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage; Provided, however, that the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1c(3), plus two years.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1e; Provided, however, that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.6a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Annual Contributions Contract.* a. *Identification of Annual Contributions Contract.* The PHA has entered into an Annual Contributions Contract with the Government, as identified in Section 1.1f, under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments. A copy of the ACC shall be provided upon request.

b. *PHA Pledge of Certain ACC Payments.* The PHA hereby pledges to the payment of housing assistance payments pursuant to this Contract the portion of annual contributions payable under the ACC for such housing assistance payments. The PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of such annual contributions, except as authorized in the ACC and this Contract.

c. *Government Approval of Housing Assistance Payments Contract.* The approval of this Contract by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract.

1.6 *Maximum Housing Assistance Commitment; Project Account.* a. *Maximum Housing Assistance Commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the PHA and the Owner, the PHA shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1f; Provided, however, that this amount shall be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provision of the ACC or this Contract.

b. *Project Account.* As provided in the ACC, 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 Government consistent with its responsibilities under section 8(c)(6) of the Act, out of amounts by which the Maximum ACC Commitment per year exceeds amounts paid under the ACC for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family Incomes (see Section 1.9). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.

(2) Whenever the Government approved estimate of the required Annual Contribution exceeds the Maximum ACC Commitment, then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such Maximum ACC Commitment, the Government 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 reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

1.7 *Housing Assistance Payments To Owners.* a. *General.* (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family Income, Family composition, or extent of exceptional medical or other unusual expenses, in accordance with the Government-established schedules and criteria; or by reason of adjustment by the PHA of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification of such change to the Family.

b. *Vacancies During Rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.3b of the Agreement, (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, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to the PHA.

c. *Vacancies After Rent-up.* (1) If a 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 in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.10b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner evicts a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported by a certification that (i) he gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease of the Contract or any applicable law.

d. *Limitation on Payments for Vacant Units.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.10b of this Contract).

e. *PHA Not Obligated for Family Rent.* The PHA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.10b of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. Owner's Monthly Requests for Payments. (1) The Owner shall submit monthly requests to the PHA or as directed by the PHA for housing assistance payments. Each such request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with Section 1.3b(2)); and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed has been previously claimed or paid.

(3) If the Owner has received an excessive payment, the PHA or the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

g.[1] *Recoupment of Savings in Financing Cost.* (1) In the event that the interim financing is continued beyond one year from the effective date of the Contract and the interest cost of the interim financing for any period of three months, after such first year, is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an amount reflecting the savings in financing cost, computed in accordance with paragraph g(2) of this Section, shall be credited by the Government to the Project Account, and withheld from housing assistance payments to the Owner. If during the course of the same year there is any period of three months in which the financing cost is greater than the anticipated debt service under the permanent financing, an adjustment shall be made so that only the net amount of savings in financing cost for the year is credited by the Government to the Project Account and withheld from housing assistance payments to the Owner as aforesaid (no increased payments shall be made to the Owner on account of any net excess for the year of actual interim financing cost over the anticipated debt service under the permanent financing). Nothing in this paragraph g shall be construed as requiring a reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with Section 1.8.

(2) The computation and recoupment under this paragraph g may be made on an annual or on a quarterly or other periodic basis, but in any event no later than as of the end of each Fiscal Year; Provided, however, that if recoupment is to be made less often than quarterly, the amounts of recoupment shall be computed on at least a quarterly basis and the funds deposited in a special account from which withdrawals may be made only with the authorization of the PHA. The manner of computing the amount of recoupment shall be as follows:

(i) Determine the amount by which the interest cost for the interim financing for the period in question is less than the anticipated debt service under the permanent financing on which the Contract Rents were based;

(ii) Determine what percentage the amount found under paragraph g(2)(i) of this Section is of the aggregate Contract Rents for all Contract Units for the period in question;

(iii) Apply the percentage found in paragraph g(2)(ii) of this Section to the aggregate Contract Rents for those Contract Units which are included in the Owner's claim(s) for housing assistance payments for the period in question; and

(iv) The amount found in paragraph g(2)(iii) of this Section shall be credited to the Project Account and withheld from the next housing assistance payment or payments to the Owner.

1.8 *Maintenance, Operation and Inspection.* a. *Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the PHA determines that the Owner is not meeting any of these obligations, the PHA shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

b. *Inspection.* (1) 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 the Government, 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.

(2) The PHA shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy and rerenting of any unit) as may 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. The PHA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

c. *Units Not Decent, Safe, and Sanitary.* If the PHA 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, the PHA 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. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the PHA does not have other section 8 funds for such purposes, the PHA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The PHA shall promptly notify the Family of any such abatement.

e. *Overcrowded and Underoccupied Units.* If the PHA determines that a Contract Unit 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. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the PHA will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.7c(1).

1.9 *Rent adjustments.* a. *Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section, up to the maximum amount authorized under Section 1.6a of this Contract.

b. *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by the Government 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 the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special Additional Adjustments.* Special additional adjustments may be granted, when approved by the Government, 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., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall Limitation.* Notwithstanding any other provisions of this Contract, 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 the Government.

e. *Incorporation for Rent Adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit establishing the effective date of the adjustment.

f.[2] *Adjustment to Reflect Actual Cost of Permanent Financing.* This paragraph f shall

[1] Delete this paragraph unless the project is subject to 24 CFR 881.125.

[2] Delete this paragraph unless the project is subject to 24 CFR 881.125.

apply if the project is not permanently financed until after the effective date of the Contract. After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rent were based, the Contract Rents currently in effect shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum ACC commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.10 *Marketing And Leasing Of Units.* a. *Compliance with Equal Opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. *Security and Utility Deposits.* (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local law, 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 the PHA, 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 the amount owed 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.

(2) 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.

(3) 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.

c. *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. (See also Section 1.1g.)

(2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family Income composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. *Rent Redetermination after Adjustment in Allowance for Utilities and Other Services.* In the event that the Owner is notified of a PHA determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. *Processing of Applications and Complaints.* The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable PHA or Government requirements and shall maintain records and furnish such copies or other information as may be required by the PHA or the Government.

f. *Review; Incorrect Payments.* In making housing assistance payments to Owners, the PHA or the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the PHA or the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.11 *Termination of Tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in Section 1.7c.

1.12 *Reduction of Number of Contract Units for Failure To Lease to Eligible Families.* a. *After First Year of Contract.* If at any time, beginning six months after the effective date of this 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 Families, the PHA, with Government approval, 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 Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

b. *At End of Initial and Each Renewal Term.* At the end of the initial term of the Contract and of each renewal term, the PHA, with Government approval, 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 Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

c. *Restoration of Units.* The Government will agree to an amendment of the ACC to provide for subsequent restoration of any reduction made pursuant to paragraph a or b of this Section if the Government 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 this Contract and if annual contributions contract authority is available; and the Government will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance (see Section 1.6).

WARNING: 18 U.S.C. 101 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Approved: United States of America, Secretary of Housing and Urban Development.	Owner _____ By _____ *(Official title)* Date _____, 19____
By _____ *(Official title)*	PHA _____ By _____ *(Official title)*
Date _____, 19____	Date _____, 19____

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES—STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A–1.

Effective date. The effective date of this Contract with respect to the units described in Exhibit A–1 is _____, 19____. [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: United States of America, Secretary of Housing and Urban Development.	Owner _____ By _____ *(Official title)* Date _____, 19____
By _____ *(Official title)*	PHA _____ By _____ *(Official title)*
Date _____, 19____	Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES—STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A–2.

Effective date. The effective date of this Contract with respect to the units described in Exhibit A–2 is _____, 19____. [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: United States of America, Secretary of Housing and Urban Development.	Owner _____ By _____ (*Official title*) Date _____, 19____
By _____ (*Official title*)	PHA _____ By _____ (*Official title*)
Date _____, 19____	Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES—STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A–3.

Effective date. The effective date of this Contract with respect to the units described in Exhibit A–3 is _____, 19____. [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: United States of America, Secretary of Housing and Urban Development.	Owner _____ By _____ (*Official title*) Date _____, 19____
By _____ (*Official title*)	PHA _____ By _____ (*Official title*)
Date _____, 19____	Date _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

HOUSING ASSISTANCE PAYMENTS CONTRACT, SUBSTANTIAL REHABILITATION; PRIVATE-OWNER/PHA PROJECT

Part II. 2.1 *Nondiscrimination In Housing.* a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and E.O. 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government, of the said Department, and the PHA any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 *Training, Employment, And Contracting Opportunities For Businesses And Lower-Income persons.*[1] a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of $50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the later has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with re-

[1] Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are $500,000 or less.

spect to his own employment practices when he participates in federally assisted work.

2.3. *Cooperation in Equal Opportunity Compliance Reviews.* The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood Insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.*[4] In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Air Act"), (42 U.S.C. 1857, et seq.), the Federal Water Pollution Control Act, as amended ("Water Act"), (33 U.S.C. 1251, et seq.), and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *PHA and Government Access to Premises and Owner's Records.* a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA or the Government.

b. The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly request for housing assistance payments.

2.7 *Failure Or Inability Of PHA To Comply With Contract.* The following provisions of the ACC are hereby made a part of this Contract:

(a) *Rights of Owner if PHA Defaults Under Agreement or Contract.*

* * * * *

(2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner of his assignee who will have been specifically approved by the Government prior to such assignment. If the Owner and the assignees are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a)(1) or (a)(2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take the actions authorized in paragraph (a)(1) or (a)(2) to carry out the obligations of the PHA to the Owner, and (iii) proceed against the Government by suit at law or in equity.

2.8 *Rights Of PHA And Government If Owner Defaults.* a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government.

c. (The provisions of this paragraph c shall apply only if the PHA is the lender.) Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of his obligations under the Contract, the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payments and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this Section, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with Section 2.16(b) of the ACC.

2.9 *Remedies Not Exclusive And Non-Waiver Of Remedies.* The availability of any remedy under this Contract or the ACC shall not preclude the exercise of any other remedy under this Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.10 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals 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 Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with the decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.11 *Interest Of Members, Officers, Or Employees Of PHA, Members Of Local Governing Body Or Other Public Officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in

[4] Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are $100,000 or less.

this Contract or in any proceeds or benefits arising therefrom.

2.12 *Interest Of Member Of Or Delegate To Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.13 *Assignment, Sale, Or Foreclosure.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract or the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

d. In the event of foreclosure, including foreclosure by the Government, and in the event of assignment or sale agreed to by the Government or made to the Government, housing assistance payments shall continue in accordance with the terms of the Contract.

[If the project is subject to 24 CFR 881.125, paragraph d above shall be stricken and the following shall be used instead:

d. In the event of foreclosure, or assignment or sale to the financing agency in lieu of foreclosure, or in the event of assignment or sale agreed to by the financing agency and approved by the Government (which approval shall not be unreasonably delayed or withheld), housing assistance payments shall continue in accordance with the terms of the Contract.]

DAVID M. DEWILDE,
Acting Assistant Secretary for Housing Production, and Mortgage Credit—FHA Commissioner.

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PART III

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

Milk in the Appalachian, Chattanooga, Tennessee, Knoxville, Tennessee, and Ohio Valley Marketing Areas

Proposed Amendments to Tentative Marketing Agreements and Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1011, 1090, 1101, 1033]

[Docket Nos. AO-251-A19; AO-266-A21; AO-195-A25; AO-166-A48]

MILK IN THE APPALACHIAN; CHATTANOOGA, TENNESSEE; KNOXVILLE, TENNESSEE; AND OHIO VALLEY MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

Notice is hereby given of a public hearing to be held at the Sheraton Inn, Executive Park (Interstate 40 and Interstate 75 at Cedar Bluff) Knoxville, Tennessee, beginning at 1:30 p.m., on June 9, 1975, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Appalachian Chattanooga, Tennessee; Knoxville, Tennessee; and Ohio Valley marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

The marketing area in Proposal No. 1 includes eight counties (Floyd, Johnson, Magoffin, Martin and Pike in Kentucky, and Logan, Mingo and Wyoming in West Virginia) now in the marketing area of the Ohio Valley order. The only issue applicable to the Ohio Valley order open for consideration at the hearing is whether any of these counties should be included in the marketing area specified in Proposal No. 1 or be retained in the marketing area of the Ohio Valley order.

The proposals relative to a redefinition of the marketing areas raise the issue whether the provisions of the present orders would tend to effectuate the declared policy of the Act, if they are applied to the marketing areas as proposed to be redefined and, if not, what modifications of the provisions of the orders would be appropriate.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY DAIRYMEN, INC.

PROPOSAL NO. 1

PART 1011—MILK IN APPALACHIAN MARKETING AREA

GENERAL PROVISIONS AND DEFINITIONS

§ 1011.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

§ 1011.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of marketing milk or its products for its members.

§ 1011.6 Appalachian marketing area.

"Appalachian marketing area" hereinafter called the marketing area, means all of the territory geographically located within the perimeters of the following counties:

GEORGIA COUNTIES

Catoosa	Murry
Chattooga	Walker
Dade	Whitfield
Fannin	

KENTUCKY COUNTIES

Bell	Letcher
Breathitt	Martin
Floyd	McCreary
Harlan	McGoffin
Johnson	Perry
Knott	Pike
Knox	Whitley
Leslie	

TENNESSEE COUNTIES

Anderson	Loudon
Blount	Marion
Bradley	McMinn
Campbell	Megis
Carter	Monroe
Claiborne	Morgan
Cocke	Polk
Cumberland	Rhea
Grainger	Roane
Greene	Sequatchie
Hamblen	Scott
Hamilton	Sevier
Hancock	Sullivan
Hawkins	Unicoi
Jefferson	Union
Johnson	Washington
Knox	

VIRGINIA COUNTIES

Bland	Smyth
Buchanan	Tazewell
Dickenson	Washington
Lee	Wise
Russell	Wythe
Scott	

WEST VIRGINIA COUNTIES

Logan	Monroe
McDowell	Summers
Mercer	Wyoming
Mingo	

§ 1011.7 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or sale from a plant or plant store) of any milk or milk products (including filled milk) classified as Class I milk pursuant to § 1011.41(a) other than a delivery to a plant.

A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another plant.

§ 1011.8 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned or operated by one or more persons constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and processed or packaged: *Provided*, That this definition shall not be deemed to include any separate building, premises or facilities the primary function of which is to hold or store packaged milk or milk products (including filled milk) in finished form in transit on routes. Such facilities are considered a distribution point.

§ 1011.9 Pool plant.

"Pool plant" means any plant except the plant of a producer-handler or a plant described in § 1011.61:

(a) From which during the month:

(1) Total disposition of Class I milk, except filled milk, is equal to not less than 50 percent of the milk approved or recognized by a duly constituted regulatory authority for distribution within the marketing area which is received from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d); and

(2) Disposition of Class I milk, except filled milk, on routes in the marketing area is equal to not less than 15 percent of its total Class I milk disposition, except filled milk, on routes both inside and outside the marketing area;

(b) From which milk or milk products, except filled milk, approved or recognized by a duly constituted regulatory authority for distribution within the marketing area in an amount equal to not less than 50 percent of its receipt of such milk or milk products from dairy farmers and from cooperative associations who deliver such milk to such plant in the manner described in § 1011.10(d) are shipped as milk, skim milk, or cream in fluid form to plants specified in paragraph (a) of this section: *Provided*, That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through March shall be a pool plant for the following months of April through July unless the operator of such plant files with the market administrator prior to the first day of any month of April through July a written request for nonpool status for such month; or

(c) Which is operated by a cooperative association, if the total pounds of milk, skim milk or cream approved or recognized by a duly constituted health authority for distribution within the marketing area which are transferred from such plant to pool plants qualified pursuant to paragraph (a) or (b) of this section and which are received at similarly qualified pool plants from producers who are members of the association are equal to not less than 66 percent of the pounds of Class I utilization, except filled milk, at such other pool plants.

§ 1011.10 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates a partially regulated distributing plant;

(c) Any cooperative association of producers with respect to producer milk diverted by it from a pool plant to a nonpool plant in accordance with the provisions of § 1011.12;

(d) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under control of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

(e) A producer-handler, or any person who operates another order plant described pursuant to § 1011.61.

§ 1011.11 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory authority or produces milk acceptable for fluid consumption at Federal, State, or municipal establishments within the marketing area, which milk is received at a pool plant or diverted from the farm directly to a nonpool plant. The term shall not include such person with respect to milk received at a pool plant from another order plant by diversion if both buyer and seller have requested Class II classification (or its equivalent) in the reports of receipts and utilization filed with the respective market administrators.

§ 1011.12 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk:

(a) Received at a pool plant directly from a dairy farmer or a handler pursuant to § 1011.10(c): *Provided,* That if the milk received at a pool plant from a handler pursuant to § 1011.10(c) is purchased on a basis other than farm weights the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1011.10(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant subject to the following conditions:

(1) Such milk shall be determined to have been received by the diverting handler at the plant from which diverted, if diverted, to a nonpool plant located not more than 125 miles from the City Hall in Bristol, Chattanooga, Kingsport, or Knoxville, Tennessee. Milk diverted to a nonpool plant located more than 125 miles from Bristol, Chattanooga, Kingsport, or Knoxville, Tennessee, shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) During the months of September through February, not less than 20 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) During the months of March through August, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(4) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(5) During the months of March through August, a cooperative association may divert for its account the milk of any member producer without limit during the month if the total quantity of milk so diverted does not exceed 33 percent of the cooperative's total member producer milk during the month;

(6) During the months of March through August, the operator of a pool plant other than a cooperative association may divert for his account the milk of any nonmember producer without limit during the month if the total volume of milk diverted does not exceed 33 percent of the nonmember producer milk at such plant during that month; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (5) and (6) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1011.13 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1011.41(b) (1) from any source other than producers, handlers described in § 1011.10(d), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1011.41(b) (1);

(c) Products (other than fluid milk products, products specified in § 1011.41 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1011.41(b) (1)) for which the handler fails to establish a disposition.

§ 1011.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a plant from which Class I milk is disposed of on routes in the marketing area whose only source of supply for Class I milk is milk of his own production and products designated as Class I milk pursuant to § 1011.41(a) from pool plants.

§ 1011.15 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

§ 1011.18 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1011.41 (b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1011.20 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (in-

cluding a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1011.21 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

REPORTS

§ 1011.30 Reports of receipts and utilization.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administrator, for each of his pool plants and for each accounting period elected in such month, in the detail and on forms prescribed by the market administrator, as follows:

(1) The quantities of skim milk and butterfat contained in receipts of producer milk;

(2) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 1011.10(d);

(3) The quantities of skim milk and butterfat contained in other source milk;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.41(b)(1);

(5) The utilization of all skim milk and butterfat required to be reported by this part, including a separate statement of the route disposition of Class I milk outside the marketing area, and a statement showing separately in-area and outside area route disposition of filled milk; and

(6) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

(b) Each handler specified in § 1011.10(b) who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts in Grade A milk from dairy farmers shall be reported in lieu of those in producer milk; such report shall include a separate statement showing the respective amounts of skim milk and butterfat disposed of on routes in the marketing area as Class I milk and the quantity of reconstituted skim milk in such disposition.

(c) On or before the 6th day after the end of each month, each cooperative association, with respect to milk for which it is a handler pursuant to § 1011.10(c) or (d), shall report to the market administrator for such month, and for each accounting period elected in such month, in the detail and on forms prescribed by the market administrator, as follows:

(1) The quantities of skim milk and butterfat contained in receipts of producer milk; and

(2) The quantities of skim milk and butterfat contained in milk delivered to each pool plant and in the milk diverted to each nonpool plant.

(d) Each handler who submits reports on the basis of an accounting period of less than a month, as described in § 1011.35, shall submit a summary report of the same information for the entire month.

§ 1011.31 Other reports.

(a) Each producer-handler and each handler operating a nonpool plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

§ 1011.32 Payroll reports.

On or before the 20th day of each month, each handler shall submit to the market administrator the following reports:

(a) Each handler who receives milk from producers shall submit his producer payroll for deliveries of milk for the preceding month for each of his pool plants which shall show:

(1) The name and address of each producer;

(2) The total pounds and the average butterfat test of milk received from such producer;

(3) The days on which milk was received from such producer if less than a full month;

(4) The rate and net amount of payment to each producer; and

(5) The amount and nature of any deductions or charges involved in such payments.

(b) Each handler operating a partially regulated distributing plant, and who does not elect to make payments pursuant to § 1011.62(b), shall submit his dairy farmer payroll for deliveries of milk to the partially regulated distributing plant for the preceding month which shall show:

(1) The name and address of each dairy farmer;

(2) The total pounds and the average butterfat test of milk received from such dairy farmer;

(3) The rate and net amount of payment to each dairy farmer; and

(4) The amount and nature of any deduction or charges involved in such payments.

§ 1011.35 Accounting periods.

A handler may account for the receipts, utilization and classification of milk and filled milk at any of his pool plants for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

CLASSIFICATION

§ 1011.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to §§ 1011.30 and 1011.31 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1011.41 through 1011.46.

§ 1011.41 Classes of utilization.

Subject to the conditions set forth in §§ 1011.42 through 1011.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section: *Provided,* That if nonfluid milk products are used to fortify fluid cream products, eggnog or yogurt, the quantity of skim milk in any modified fluid cream product, eggnog or yogurt that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content, shall be a Class II utilization;

(2) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(4) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section; and

(5) In shrinkage assigned to Class II pursuant to §§ 1011.42(d) and 1011.42(e).

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, low fat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(4) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1011.19;

(5) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form; and

(6) In shrinkage assigned to Class III pursuant to §§ 1011.42(d) and 1011.42(e).

§ 1011.42 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1011.30, the market administrator shall determine the following:

(a) Compute the total shrinkage of skim milk and butterfat at each pool plant;

(b) Prorate the resulting amounts between:

(1) The receipts specified in paragraph (c) (1) through (7) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) Other source milk not specified in paragraph (c) (1) through (7) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(c) The maximum shrinkage of skim milk and butterfat to be prorated to Class II and Class III pursuant to paragraph (d) of this section, shall be computed as follows:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1011.10(d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1011.10(d), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler;

(7) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer receipts for which a cooperative association is the handler pursuant to § 1011.10 (c) or (d). If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero; and

(8) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (c) (1), (2), (4), (5), and (6) of this section.

(d) Multiply the pounds of shrinkage in skim milk and butterfat, respectively, prorated pursuant to paragraph (b)(1) of this section not to exceed the pounds of skim milk and butterfat, respectively, computed pursuant to paragraph (c) of this section by the percentage of skim milk and butterfat, respectively, classified pursuant to §§ 1011.41(a) (1) and (2), 1011.41(b) (1) through (3), and 1011.41(c) (1) through (4), [excluding dispositions based on weights determined from measurement at the farm and from butterfat tests determined from farm bulk tank samples, and other source milk in a form other than that of a fluid milk product or a fluid cream product, which is used to produce products defined pursuant to §§ 1011.41(b)(3) and 1011.41 (c)(1)], which is in Class II milk and Class III milk, respectively. The resulting amounts shall be the pounds of skim milk and butterfat assigned to Class II milk and Class III, respectively, pursuant to §§ 1011.41(b)(5) and 1011.41(c)(6), respectively.

(e) Multiply the pounds of shrinkage in skim milk and butterfat, respectively, prorated pursuant to paragraph (b)(2) of this section by the percentage of skim milk and butterfat, included in such other source receipts, for which Class II utilization is requested. The resulting amounts of skim milk and butterfat, respectively, shall be assigned to Class II pursuant to § 1011.41(b)(5). The remaining pounds of skim milk and butterfat prorated pursuant to paragraph (b)(2) of this section shall be assigned to Class II pursuant to § 1011.41(c)(6).

§ 1011.44 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk and butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1011.10(d) to another pool plant shall be classified as Class I milk unless both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1011.46(a)(12) and the corresponding step of § 1011.46(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1011.46(a)(7) or the corresponding step of § 1011.46(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1011.46(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk has been received at the transferee-plant; and

(4) If a specified classification is not claimed by both plants in the case of transfers by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee-plant after making the assignments pursuant to § 1011.46(a)(12) and the corresponding step of § 1011.46(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other plant of skim

milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1011.41.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) and (a) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1011.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from other pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unasisgned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers of packaged products defined pursuant to § 1011.41(b) (1).* Transfers to any plant of skim milk and butterfat in the form of packaged products defined pursuant to § 1011.41(b) (1) shall be classified as Class II regardless of their allocation at the transferee-plant.

§ 1011.45 General classification rules.

In determining the classification of producer milk pursuant to § 1011.46, the following rules shall apply:

(a) The market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1011.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1011.10(c) or (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1011.41, 1011.42, and 1011.44; and

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1011.46 Classification of producer milk.

The market administrator shall determine the classification of producer milk of each handler described in § 1011.10(a) for each of his pool plants separately and of each handler described in § 1011.10 (c) and (d) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II and Class III, respectively, the pounds of skim milk in shrinkage classified as Class II and Class III, respectively, pursuant to § 1011.42 (d);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.41(b) (7) that were received in packaged form from other plants but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.41(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1011.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1011.41(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1011.10(d), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1011.41(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class II and Class III, respectively, the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v) and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be

increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1011.47(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1011.10(d) according to the classification of such products pursuant to § 1011.44(a): *Provided*, That if the pounds of skim milk for which Class II is requested exceed the pounds of skim milk remaining in Class II such excess shall be subtracted from Class I, and if the pounds of skim milk for which Class III is requested exceed the pounds of skim milk remaining in Class III, such excess shall be subtracted from Class I; and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1011.47 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1011.46(a) (12) and the corresponding step of § 1011.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1011.46 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

Minimum Prices

§ 1011.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing by Class I price, the resulting price shall be not less than $4.33.

§ 1011.51 Class prices.

Subject to the provisions of § 1011.53, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.15.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1011.52 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1011.53 Plant location adjustments for handlers.

(a) For that milk received from producers or from a handler described in § 1011.10(d) at a pool plant located at any point which is 60 miles or more from the City Hall in Bristol, Chattanooga, Kingsport, or Knoxville, Tennessee, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price specified in § 1011.51(a) shall be:

(1) Reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received if such plant is located in the states of Kentucky, Tennessee, West Virginia, and Tazewell County, Virginia; or

(2) Increased at the rate set forth in the following schedule according to the location of the plant where such milk is received if such plant is not located in subparagraph (1) of this section:

	Rate per hundredweight (cents)
Distance from city hall:	
60 miles but less than 70 miles	12.0
For each additional 10 miles or fraction thereof an additional	2.0

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1011.10(d), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1011.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 1011.60 Producer-handlers.

Sections 1011.50 through 1011.54, 1011.62, 1011.70, and 1011.90 through 1011.99 shall not apply to a producer-handler.

§ 1011.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempt from regulation under this order except as specified in paragraphs (c) and (d) of this section.

(a) Any plant qualified pursuant to § 1011.9(a) which would be fully regulated under the provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk, except filled milk, is disposed of from such plant on routes in the Appalachian marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 1011.9 (b) or (c) which would be fully regulated under the provisions of another order issued pursuant to the Act unless such plant was a pool plant pursuant to § 1011.9 (b) or (c) for each month during the preceding August through March period.

(c) Each handler operating a plant described in paragraph (a) or (b) of this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1011.30), and allow verification of such reports by the market administrator.

(d) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (d) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1011.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1011.30(b) and 1011.32(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price pursuant to § 1011.71, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a) (3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1011.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b) (1) (i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1011.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than

the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1011.70 for such handler shall include, in lieu of the value of other source milk specified in § 1011.70(f) less the value of such other source milk specified in § 1011.94(b)(2), a value of milk determined pursuant to § 1011.70 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1011.9(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1011.30(b) and 1011.32(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1011.70 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.91, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated.

(ii) If paragraph (b)(1)(ii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.91, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

DETERMINATION OF UNIFORM PRICE

§ 1011.70 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1011.10 (c) and (d) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1011.46 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1011.46(a)(14) and the corresponding step of § 1011.46(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1011.91 that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1011.46(a)(9) and the corresponding step of § 1011.46(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.46(a)(7)(i) through (iv) and the corresponding step of § 1011.46(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.46(a)(7)(v) and (vi) and the corresponding step of § 1011.46(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1011.46(a)(11) and the corresponding step of § 1011.46(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1011.71 Computation of weighted average and uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received as follows:

(a) Combine into one total the values computed pursuant to § 1011.70 for all handlers who filed the reports prescribed by § 1011.30 for the month and who are not in default of payments pursuant to § 1011.94 for the preceding month;

(b) Add or subtract an amount equal to the net total value of the location adjustments computed pursuant to § 1011.92;

(c) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1011.70(f); and

(e) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price"; and also the "uniform price" for milk received from producers.

§ 1011.72 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The tenth day after the end of each month the uniform price for such month.

PAYMENTS

§ 1011.90 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 7th day following each of the first two 10-day periods of each month to each producer, who did not discontinue shipping milk to such handler within 7 days following the end of the 10-day period for which payment is to be made, an amount equal to not less than 90 percent of the uniform price for the preceding month multiplied by the hundredweight of milk received from such producer during the 10-day period for which payment is being made, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(b) On or before the 15th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight for the month, as adjusted pursuant to § 1011.91 and § 1011.92 and plus or minus adjustments for errors made in previous payments to such producer and less (1) the payment made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1011.98, and (3) proper deductions authorized by such producer for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss in-

curred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b) (2) and (3) of this section: *Provided*, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of such certification through the last day of the month preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

(1) The identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 5th day preceding the last day on which a payment may be made pursuant to paragraph (a) of this section, the total pounds of milk received during the 10-day period for which payment is to be made; and

(2) On or before the 5th day of the following month the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler.

(f) (1) Each handler shall pay to the cooperative association on or before the 5th day following each of the first two 10-day periods of each month for milk received from it as a handler an amount equal to not less than 90 percent of the uniform price for the preceding month, multiplied by the hundredweight of milk received from the cooperative during the 10-day period for which payment is being made; and

(2) Each handler shall make final payment to the cooperative association on or before the 13th day of the following month at an amount computed at not less than the value of such milk at the minimum prices for milk in each class as adjusted by the butterfat differential specified in § 1011.91 that are applicable at the location of the receiving handler's pool plant, less payments made pursuant to paragraph (f) (1).

§ 1011.91 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1011.92 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1011.53 multiplied by the marketwide proportion of producer milk allocated to Class I during the month; and

(b) For purposes of computations pursuant to §§ 1011.61, 1011.94 and 1011.95 the weighted average price shall be adjusted at the rates set forth in § 1011.53 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1011.93 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1011.61, 1011.62, 1011.94, and 1011.96 subject to the provisions of § 1011.97 and out of which he shall make all payments pursuant to §§ 1011.95 and 1011.96: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1011.94 Payments to the producer-settlement fund.

On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

(a) The total value of milk of the handler for such month as determined pursuant to § 1011.70.

(b) The sum of:

(1) The value at the uniform price, as adjusted pursuant to § 1011.92, of such handler's receipts of producer milk; and

(2) The value at the weighted average point applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1011.70(f).

§ 1011.95 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1011.94(b) exceeds the amount computed pursuant to § 1011.94(a). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1011.96 Adjustment errors in payment.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1011.94 the market administrator shall promptly bill such handler for any unpaid amount and such handler shall within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1011.95, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1011.90, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1011.97 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1011.61, 1011.62, 1011.90, 1011.94, 1011.95, 1011.96, 1011.98, or 1011.99 shall be increased one-half of one percent on the first of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1011.98 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1011.90 shall deduct 6 cents per hundredweight as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such monies shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not

receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments, to be made to such producers as may be authorized by the Membership Agreement or Marketing Contract between such cooperative associations and such producers on or before the 15th day after the end of each month, and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions computed for each producer.

§ 1011.99 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1011.10(d);

(b) Other source milk allocated to Class I pursuant to § 1011.46(a) (7) and (11) and the corresponding steps of § 1011.46(b), except such other source milk that is excluded from the computations pursuant to § 1011.70 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1011.62(a) (2): *Provided,* That if such handler elects two accounting periods within the month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period.

PROPOSED BY PET, INC., DAIRY DIVISION; MAYFIELD DAIRY FARMS, INC.; AND FARMBEST, INC.:

PROPOSAL NO. 2

PART 1090—MILK IN THE CHATTANOOGA, TENN., MARKETING AREA

GENERAL PROVISIONS

§ 1090.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by references and made a part of this Order.

DEFINITIONS

§ 1090.2 Knoxville-Chattanooga, Tennessee marketing area.

The Knoxville-Chattanooga, Tennessee marketing area, hereinafter called the "marketing area" means all the territory geographically within the boundaries of the following counties, including all territory wholly or partly therein occupied by Government (Municipal, State, or Federal) reservations, installations, instructions, or other similar establishments.

TENNESSEE

Anderson	Marion
Blount	McMinn
Bradley	Meigs
Campbell	Monroe
Cocke	Morgan
Cumberland	Polk
Grainger	Rhea
Hamblen	Roane
Hamilton	Scott
Jefferson	Sequatchie
Knox	Sevier
Loudon	Union

GEORGIA

Catoosa	Murray
Chattooga	Walker
Dade	Whitfield
Fannin	

§ 1090.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1090.4 [Reserved]

§ 1090.5 [Reserved]

§ 1090.6 [Reserved]

§ 1090.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 10 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided,* That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through March shall be designated as a pool plant for the following months of April through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of April-July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 70 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in paragraph (d) (2) (i) or (ii) of this section:

(i) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Knoxville-Chattanooga, Tennessee marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through March.

§ 1090.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1090.13;

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under control of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1090.7(d).

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.11 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1090.12 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the inspection requirements of a duly constituted health authority for distribution in the marketing area, and whose milk is (a) received at a pool plant, or (b) received by a cooperative association in its capacity as a handler pursuant to § 1090.9 (b), or (c) diverted from a pool plant to a nonpool plant other than an other order plant or a plant of a producer-handler: (1) Any day during the months of March through July, and (2) on not more than 15 days during any of the months of August through February: *Provided,* That the milk so diverted shall be deemed to have been received at the pool plant from which diverted if diverted for the account of the operator of such plant, or at the location of the pool plant from which diverted if diverted for the account of a cooperative association.

§ 1090.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in (a) milk received at a pool plant directly from producers, (b) milk from producers diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1090.12(c), or (c) milk received by a cooperative association pursuant to § 1090.9(c): *Provided,* That the milk of a dairy farmer received at a pool plant described in § 1090.7(b) during the automatic pool plant qualification period of April through July shall not be producer milk unless the entire milk production of said dairy farmer during the preceding months of August through March qualified as producer milk under this Knoxville-Chattanooga Order, 7 CFR 1090.

§ 1090.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1090.40 (b) (1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1090.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1090.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1090.40(b) (1)) for which the handler fails to establish a disposition.

§ 1090.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1090.40(b) or (c) (1) (i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plan or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1090.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1090.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1090.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1090.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1090.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1090.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1090.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1090.9 (a) and (b) shall re-

port to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1090.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1090.32 Other reports.

(a) Each producer-handler and each handler operating a nonpool plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

(Subparagraph (c) in § 1090.32(c) below is proposed by Mayfield Dairy Farms, Inc., only.)

(c) On or before the sixth day after the end of each of the months of March through July, the aggregate quantity of base milk received during the month at each of his pool plants, and on or before the 20th day after the end of each of the months of March through July the pounds of base milk received during the month from each producer.

§ 1090.33 Accounting periods.

A handler may account for the receipts, utilization and classification of milk and filled milk at any of his pool plants for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

CLASSIFICATION OF MILK

§ 1090.40 Classes of utilization.

Except as provided in § 1090.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1090.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1090.15; and

(6) In shrinkage assigned pursuant to § 1090.41(a) to the receipts specified in § 1090.41(a)(2) and in shrinkage specified in § 1090.41 (b) and (c).

§ 1090.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1090.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1090.9(b), but not in excess of 0.5 percent of the skim milk and butter-

fat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1090.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the tranferee-plant after the computations pursuant to § 1090.44(a) (12) and the corresponding step of § 1090.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1090.44(a) (7) or the corresponding step of § 1090.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1090.44(a) (11) or (12) or the corresponding steps of § 1090.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1090.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1090.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator.

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1090.43 General classification rules.

In determining the classification of producer milk pursuant to § 1090.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1090.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1090.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1090.40, 1090.41, and 1090.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1090.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1090.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1090.9(a) for each of his pool plants separately and of each handler described in § 1090.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1090.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1090.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1090.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1090.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III of the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this alloctaion step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted; and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1090.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(122)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1090.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1090.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1090.44 on the basis of such report and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1090.50 Class prices.

Subject to the provisions of § 1090.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.84.

(b) *Class II milk.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1090.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1090.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is located outside the following areas—

The marketing area.
Within 100 miles of the nearest point in the boundary of the marketing area.
The State of Tennessee.
The State of North Carolina.
States south of Tennessee.
States south of North Carolina.

shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that the shortest hard-surfaced highway distance from said plant to the nearer of the main U.S. Post Office in Knoxville, Tennessee, and the main U.S. Post Office in Chattanooga, Tennessee, exceeds 350 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant, which is in excess of the sum of receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1090.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1090.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1090.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1090.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1090.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1090.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1090.44(a)(9) and the corresponding step of § 1090.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (i) through (iv) and the corresponding step of § 1090.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (v) and (vi) and the corresponding step of § 1090.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(11) and the corresponding step of § 1090.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(The following § 1090.61 is proposed by Farmbest, Inc., and Pet, Inc., Dairy Division.)

§ 1090.61 Computation of weighted average and uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received as follows:

(a) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who are not in default of payments pursuant to § 1090.71 for the preceding month;

(b) Add or subtract an amount equal to the net total value of the location adjustments computed pursuant to § 1090.75;

(c) Add an amount equal to one half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

(e) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price"; and also the "uniform price" for milk received from producers.

(The following § 1090.61 is proposed by Mayfield Dairy Farms, Inc.)

§ 1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February, the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who made the payments pursuant to §§ 1090.71 and 1090.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1090.75;

(3) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in each of the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a) (1) of this section as follows:

(i) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class III milk in the pool plants of such handlers by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b) (1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) (2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b) (3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b) (4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b) (5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content, f.o.b. market.

§ 1090.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1090.61 for such month.

PAYMENTS FOR MILK

§ 1090.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.71, 1090.76, and 1090.77, and out of which he shall make all payments pursuant to §§ 1090.72 and 1090.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1090.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1090.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1090.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1090.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator's an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1090.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1090.71(a) (2) exceeds the amount computed pursuant to § 1090.71(a) (1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

(The following § 1090.73 is proposed by Mayfield Dairy Farms, Inc.)

§ 1090.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s), as adjusted pursuant to §§ 1090.74 and 1090.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a) (1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1090.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1090.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as

determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1090.77.

(The following § 1090.73 is proposed by Farmbest, Inc., and Pet Inc., Dairy Division.)

§ 1090.73 Time and method of payment for producer milk.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer for milk received during the month as follows: On or before the 15th day after the end of the month, an amount equal to not less than the applicable uniform price(s) adjusted by the butterfat and location differentials to producers, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(1) Less marketing service deductions made pursuant to § 1090.86; and

(2) Less proper deductions authorized in writing by such producer;

(b) In the case of a cooperative association which has so requested the handler in writing, such handler shall, on or before the second day prior to the date payments are due to individual producers pursuant to paragraph (a) of this section, pay the association for milk received during the month from the producer-members of such association an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided,* That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the second day prior to the date payments are due individual producers, each handler shall pay a cooperative association for milk received at his pool plant from such association for which the association is the handler not less than the value of such milk computed at the applicable minimum class prices for the location of the pool plant of the buying handler; and

(d) In making the payments to producers pursuant to paragraph (a) or (b) of this section, each handler shall furnish each producer from whom he had received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required pursuant to this part;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount payment to the producer or cooperative association.

§ 1090.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1090.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1090.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1090.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1090.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1090.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1090.30(b) and 1090.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1090.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1090.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk

at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1090.60 for such handler shall include in lieu of the value of other source milk specified in § 1090.60(f) less the value of such other source milk specified in § 1090.71(a)(2)(ii), a value of milk determined pursuant to § 1090.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1090.7(b) subject to the following conditions:

(*a*). The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1090.30 (b) and 1090.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1090.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1090.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1090.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1090.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1090.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1090.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to skim milk and butterfat contained in:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1090.44(a) (7) and (11) and the corresponding steps of § 1090.44(b), except such other source milk that is excluded from the computations pursuant to § 1090.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1090.76(a)(2): *Provided*, That if such handler elects two accounting periods within the month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period.

§ 1090.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1090.73, shall deduct 6 cents per hundredweight or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

(The following §§ 1090.90 and 1090.94 are proposed by Mayfield Dairy Farms, Inc., only.)

BASE-EXCESS PLAN

§ 1090.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1090.92, multiplied by the number of days in such month.

§ 1090.91 Excess milk.

"Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1090.92.

§ 1090.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1090.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided*, That any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant.

§ 1090.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1090.92 to each person for whose account producer milk was de-

livered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1090.92 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1090.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

PROPOSAL NO. 3

Include in the order (under Proposal 2) provisions that will require that a handler who regularly receives Class I milk shall have refusal of any excess milk for use in Class II before the milk may be diverted for Class III utilization. To this end, consider the inclusion in the order of provisions to the effect that any association of producers, from which a handler purchases Class I milk during the month, that does not permit such handler the refusal for Class II use of producer milk that the association disposes of to Class III use, shall not be a "cooperative association" as defined in the order and for purposes of the order; and to the further effect that milk disposed of by such association to Class III use, with respect to which such handler was denied by the association refusal for Class II use, shall not be "producer milk" under the order.

PROPOSED BY FARMBEST, INC., AND PET, INC., DAIRY DIVISION

PROPOSAL NO. 4

PART 1011—MILK IN APPALACHIAN MARKETING AREA

GENERAL PROVISIONS

§ 1011.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1011.2 Appalachian marketing area.

The Appalachian marketing area, hereinafter called the "marketing area" means all the territory geographically within the boundaries of the following counties, including all territory wholly or partly therein occupied by Government (Municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

TENNESSEE

Greene
Sullivan
Washington

KENTUCKY

Harlan

VIRGINIA

Tazewell
Washington
Wise

WEST VIRGINIA

McDowell
Mercer

§ 1011.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1011.4 [Reserved]

§ 1011.5 [Reserved]

§ 1011.6 [Reserved]

§ 1011.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 10 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided,* That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through March shall be designated as a pool plant for the following months of April through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of April–July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 70 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in paragraph (d) (2) (i) or (ii) of this section:

(i) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Appalachian marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through March.

§ 1011.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1011.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1011.13;

(c) Any cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under control of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association

at the location of the pool plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1011.7(d).

§ 1011.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1011.11 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1011.12 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the inspection requirements of a duly constituted health authority for distribution in the marketing area, and whose milk is (a) received at a pool plant, or (b) received by a cooperative association in its capacity as a handler pursuant to § 1011.9(b), or (c) diverted from a pool plant to a nonpool plant other than another order plant or a plant of a producer-handler: (1) Any day during the months of March through July, and (2) on not more than 15 days during any of the months of August through February: *Provided*, That the milk so diverted shall be deemed to have been received at the pool plant from which diverted if diverted for the account of the operator of such plant, or at the location of the pool plant from which diverted if diverted for the account of a cooperative association.

§ 1011.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in (a) milk received at a pool plant directly from producers, (b) milk from producers diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1011.12(c), or (c) milk received by a cooperative association pursuant to § 1011.9(c): *Provided*, That the milk of a dairy farmer received at a pool plant described in § 1011.7(b) during the automatic pool plant qualification period of April through July shall not be producer milk unless the entire milk production of said dairy farmer during the preceding months of August through March qualified as producer milk under this Appalachian Order, 7 CFR 1011.

§ 1011.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1011.40(b)(1) from any source other than producers or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1011.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1011.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1011.40(b)(1)) for which the handler fails to establish a disposition.

§ 1011.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1011.40 (b) or (c)(1)(i) through (v) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1011.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat with or without the addition of other ingredients.

§ 1011.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the additional of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1011.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1011.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1011.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1011.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1011.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1011.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1011.32 Other reports.

(a) Each producer-handler and each handler operating a nonpool plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, filled milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

§ 1011.33 Accounting periods.

A handler may account for the receipts, utilization and classification of milk and filled milk at any of his pool plants for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

CLASSIFICATION OF MILK

§ 1011.40 Classes of utilization.

Except as provided in § 1011.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1011.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are proccessed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that age dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1011.15; and

(6) In shrinkage assigned pursuant to § 1011.41(a) to the receipts specified in § 1011.41(a) (2) and in shrinkage specified in § 1011.41 (b) and (c).

§ 1011.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1011.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1011.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on

the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1011.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1011.44(a)(12) and the corresponding step of § 1011.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1011.44(a)(7) or the corresponding step of § 1011.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1011.44(a) (11) or (12) or the corresponding steps of § 1011.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the maket administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1011.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1011.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1011.43 General classification rules.

In determining the classification of producer milk pursuant to § 1011.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1011.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1011.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1011.40, 1011.41, and 1011.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1011.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1011.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1011.9(a) for each of his pool plants separately and of each handler described in § 1011.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1011.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1011.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1011.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1011.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1011.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not substracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraph (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1011.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available.

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1011.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a) of this section and the corresponding step of paragraph (b) of this section.

§ 1011.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1011.44(a) (12) and the corresponding step of § 1011.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1011.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the pur-

pose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1011.50 Class prices.

Subject to the provisions of § 1011.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.84.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1011.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1011.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is located outside of the following areas—

The marketing area.
Within 100 miles of the nearest point in the boundary of the marketing area.

The State of Tennessee.
The State of Virginia.
States south of Tennessee.
States south of Virginia.

shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that the shortest hard-surface highway distance from said plant to the nearer of the main U.S. Post Office in Bristol, Virginia and the main U.S. Post Office in Harlan, Kentucky exceeds 350 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant, which is in excess of the sum of receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1011.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1011.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1011.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1011.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1011.44(a)(14) and the corresponding step of § 1011.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1011.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1011.44(a)(9) and the corresponding step of § 1011.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(7)(i) through (iv) and the corresponding step of § 1011.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(7)(v) and (vi) and the corresponding step of § 1011.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(11) and the corresponding step of §1011.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1011.61 Computation of weighted average and uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received as follows:

(a) Combine into one total the values computed pursuant to § 1011.60 for all handlers who filed the reports prescribed by § 1011.30 for the month and who are not in default of payments pursuant to § 1011.71 for the preceding month;

(b) Add or subtract an amount equal to the net total value of the location adjustments computed pursuant to § 1011.75;

(c) Add an amount equal to one half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1011.60(f); and

(e) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price"; and also the "uniform price" for milk received from producers.

§ 1011.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1011.61 for such month.

PAYMENTS FOR MILK

§ 1011.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1011.71, 1011.76, and 1011.77, and out of which he shall make all payments pursuant to §§ 1011.72 and 1011.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1011.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1011.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1011.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1011.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1011.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1011.71(a) (2) exceeds the amount computed pursuant to § 1011.71(a) (1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1011.73 Time and method of payment for producer milk.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer for milk received during the month as follows: On or before the 15th day after the end of the month, an amount equal to not less than the applicable uniform price(s) adjusted by the butterfat and location differentials to producers, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(1) Less marketing service deductions made pursuant to § 1011.86; and

(2) Less proper deductions authorized in writing by such producer;

(b) In the case of a cooperative association which has so requested the handler in writing, such handler shall, on or before the second day prior to the date payments are due to individual producers pursuant to paragraph (a) of this section, pay the association for milk received during the month from the producer-members of such association an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided,* That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the second day prior to the date payments are due individual producers, each handler shall pay a cooperative association for milk received at his pool plant from such association for which the association is the handler not less than the value of such milk computed at the applicable minimum class prices for the location of the pool plant of the buying handler; and

(d) In making the payments to producers pursuant to paragraph (a) or (b) of this section, each handler shall furnish each producer from whom he had received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required pursuant to this part;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount payment to the producer or cooperative association.

§ 1011.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price), of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1011.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1011.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1011.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1011.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1011.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1011.30(b) and 1011.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a) (3) of this section by the difference between the Class I price applicable at the loca-

tion of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1011.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b) (1) (i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1011.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1011.60 for such handler shall include, in lieu of the value of other source milk specified in § 1011.60(f) less the value of such other source milk specified in § 1011.71(a) (2) (ii), a value of milk determined pursuant to § 1011.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1011.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1011.30 (b) and 1011.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1011.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b) (1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b) (1) (iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1011.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b) (1) (iii) of this section applies.

§ 1011.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer settlement fund pursuant to § 1011.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1011.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1011.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

Administrative Assessment and Marketing Service Deduction

§ 1011.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to skim milk and butterfat contained in:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1011.44(a) (7) and (11) and the corresponding steps of § 1011.44(b), except such other source milk that is excluded from the computations pursuant to § 1011.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1011.76(a) (2): *Provided,* That if such handler elects two accounting periods within the month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period.

§ 1011.86 Deducation for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1011.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Proposal No. 5

Include in the order (under Proposal 4) provisions that will require that a handler who regularly receives Class I milk shall have refusal of any excess milk for use in Class II before the milk may be diverted for Class III utilization. To this end, consider the inclusion in the order of provisions to the effect that any association of producers, from which a

handler purchases Class I milk during the month, that does not permit such handler the refusal for Class II use of producer milk that the association disposes of to Class III use, shall not be a "cooperative association" as defined in the order and for purposes of the order; and to the further effect that milk disposed of by such association to Class III use, with respect to which such handler was denied by the association refusal for Class II use, shall not be "producer milk" under the order.

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 6

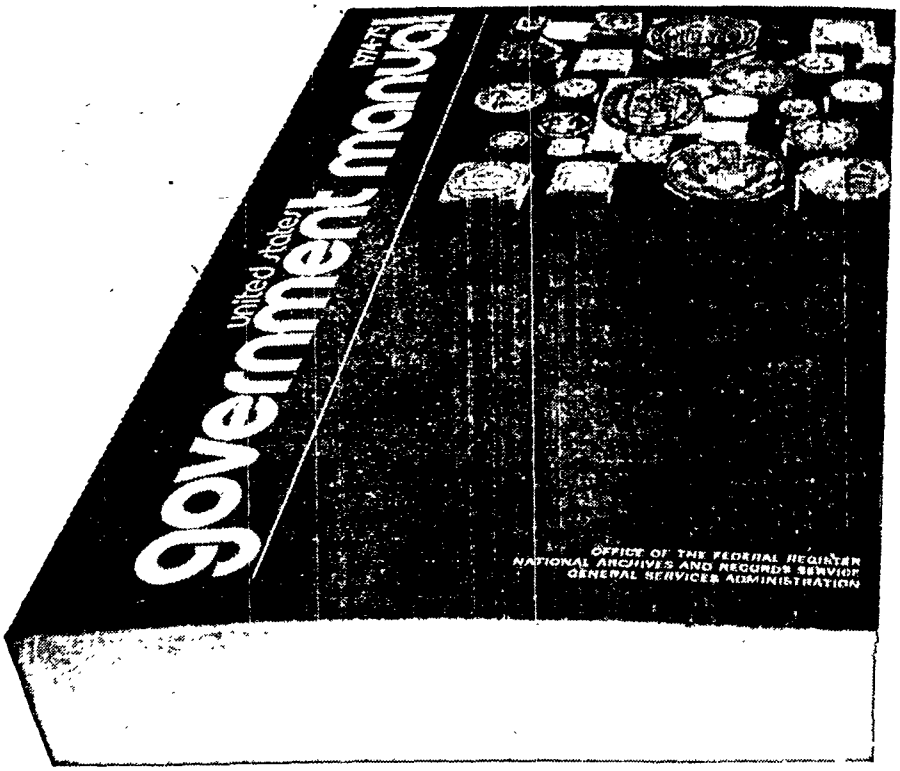
Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators, R. W. Sechrist, P.O. Box 3007, Bristol, Tennessee 37620; J. E. Bobo, P.O. Box 18030, Louisville, Kentucky 40218; W. M. Costello, P.O. Box 29226, Columbus, Ohio 43229; or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

Signed at Washington, D.C., on April 25, 1975.

JOHN C. BLUM,
Associate Administrator.

[FR Doc.75-11235 Filed 4-29-75;8:45 am]



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